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THE
LAND TRANSFER ACTS,
1875 & 1897,

AND

RULES AND ORDERS THEREUNDER,

WITH NOTES, AND FORMS & PRECEDENTS

ADAPTED FOR USE UNDER THE ACTS.

BY

BENJAMIN LENNARD CHERRY, LL.B.,

AND

HAROLD WALTER MARIGOLD, M.A.,

BOTH OF LINCOLN'S INN, BARRISTERS.

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TO

EDWARD PARKER WOLSTENHOLME,

ESQUIRE, BARRISTER-AT-LAW,

**ONE OF THE CONVEYANCING COUNSEL OF THE COURT
AND A MASTER OF THE BENCH OF THE HONOURABLE
SOCIETY OF LINCOLN'S INN,**

THIS WORK IS RESPECTFULLY

Dedicated

By the AUTHORS.

PREFACE.

THIS book was undertaken upon the kind suggestion of Sir Howard Warburton Elphinstone, who has placed the Authors under deep obligations by permitting them to draw freely upon his own knowledge and experience. It must be admitted, however, that if the magnitude of the task had been fully appreciated in the first instance, even his encouragement would not have been sufficient to induce the Authors to grapple with the subject.

At the same time, the Authors desire gratefully to acknowledge the many valuable suggestions they have received from Mr. F. J. Lewis.

Now that the Order in Council which purports to render registration of title compulsory on sales in the County of London is to come in force, as regards part of that county, on 1st January, 1899, the time has arrived to deal in detail with the new system from a conveyancing point of view.

Notwithstanding the errors which are necessarily incident to a bold treatment of a subject bristling with difficulties, the Authors have, so far as the short time at their disposal since the recent issue of

the Rules in their final form has permitted, endeavoured to face the practical problems, but with what measure of success they must leave the indulgent legal profession to determine.

At least, it is hoped that such errors as may be detected will be found, in the majority of cases, to be attributable to the desire to put a workable construction on the Acts.

Though no one, until the Acts have been judicially interpreted, will on many points be in a position to give any definite opinion, yet any prefatory remarks on this subject would be sadly wanting which did not acknowledge the great services which have been rendered by the eminent Rule Committee in elucidating the meaning of the Acts, and in some cases, perhaps, even varying with practical advantage that meaning.

Further, the courteous officers at the Registry and their supporters deserve every congratulation on their untiring energy, in the face of many disappointments, to which the passing of the Bill of 1897 must be attributed.

It now remains to see whether the experiment will prove a success; this in a great measure must necessarily depend on the manner in which the system is administered.

The Authors have added in an Appendix the draft Conveyancing Bill, with Notes, to enable

those interested in the subject to compare the two systems. Though the General Council of the Bar and the Conveyancers' Institute have reported against the principle of that Bill, it is a curious fact that the principle is the same as that of the Land Transfer Acts, the official element being merely eliminated. On this account, whenever the Land Transfer Acts are reconstructed, as reconstructed they must be as soon as sufficient experience shows what amendments are desirable, the provisions of the Conveyancing Bill, particularly those relating to cautions and inhibitions, may be found to afford some assistance.

What is wanted is that a draughtsman, with practical experience in modern conveyancing, should be instructed to draft a Bill, with the assistance of the officers of the Land Registry, to give effect to the principle of the Acts and Rules, so as to fit in with the general law.

Then, again, by the common assent of the General Council and the Institute, the provisions of the Conveyancing Bill, intended to replace Part I. of the Land Transfer Act, 1897, and those amending the Settled Land Acts and the Married Women's Property Act, 1882, are admitted to be very desirable, if not absolutely essential. These provisions will, however, require some modification, if they are detached from the rest of the Bill.

The question is often asked—Will the Acts work? The answer is, Yes. Of course, almost any system

of registration of title can be made to work with an able staff of officers such as that at the Registry. But the real question is, Will the scheme work well? Now, to be candid, the general opinion seems to be that as a whole it will not, until it has been amended, and by that is meant that endless unnecessary hitches will occur.

The Authors will be grateful to any gentlemen who will favour them with comments or suggestions.

2, STONE BUILDINGS,

LINCOLN'S INN.

December, 1898.

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ADDENDA.

- Page 14, *after line 17, add*—"A large room is, however, provided for London business: *see* p. 481, *infra*."
- .. 20, *line 3, substitute for*—"unless he . . . 488" the words "even though he has covenanted to make them: *West v. Williams*, W. N. 1898, 169 (8)."
- .. 20, *line 20, strike out*—"except such of them as the chargee is under an obligation to make."
- .. 24, *line 29, strike out*—"for value."
- .. 58, *line 16, substitute for*—"unless he . . . 488" the words "even though he has covenanted to make them: *West v. Williams*, W. N. 1898, 169 (8)."
- .. 59, *line 2, strike out*—"except as in *West v. Williams*, *ubi supra*."
- .. 95, *line 8 from foot, after "But," add*—"whether."
- .. 144, *line 7, add*—"Where unregistered land devolves to the personal representatives under this s. it seems that a title under the Statutes of Limitation would run though the beneficiary was under disability."
- .. 145, *line 10, add*—"In certain circumstances a transfer may be required before the year has expired: *see Cooper v. C.*, L. R. 7 H. L. 53, 64—67; *Re Jones*, 1897, 2 Ch. 190, 202; *Re Dickson*, W. N. 1890, 10."
- .. 152, *line 17, add*—"In *Austin v. Beddoe*, attention was not called to the history of the power to assent, hence in practice it will not be safe for a residuary devisee to rely on an assent."

THE
LAND TRANSFER ACTS,
1875 AND 1897.

CHAPTER I.

INTRODUCTION.

THE LAND TRANSFER ACTS, 1875 AND 1897, and the Rules thereunder, collectively constitute the latest attempt of the Legislature at conveyancing reform.

In this chapter, then, it is proposed to give a sketch (Part I.) of the principle of the Acts; a short statement (Part II.) of the machinery set up for giving effect to the new system; and some discussion (Part III.) as to the powers of a registered proprietor.

This Introduction, having regard to the length of the Acts and Rules, is necessarily incomplete, hence does not aspire to perfect accuracy. Nevertheless, it is hoped that it may prove useful to the practitioner addressing himself to the study of the Acts for the first time.

Part I.

In the first place the distinction between mere registration of deeds, or memorials of deeds, and registration of title, must be carefully noted; the former is merely a method of preventing fraud or mistake by the suppression of deeds, while the essence of registration of title is the keeping noted up to date of the title of the owner for the time being of the land, so as to save repeated investigations of the same title by purchasers or chargees of registered land. This is strictly carried out by the

Principle of
the Acts and
Rules.

Acts where the title registered is absolute (L. T. A., 1875, ss. 7 and 13; L. T. R., 1898, r. 47) and the subject-matter of the transaction is the fee simple in possession or the term created by the lease. Reversionary interests, life estates, and other interests carved out of the fee simple or the term of years, must be created and dealt with off the register (L. T. A., 1875, s. 49), which affords little or no assistance in such cases. Where the title registered is possessory (L. T. A., 1875, s. 8; L. T. R., 1898, r. 48) the position is the same as in the case of an absolute title, except that the title prior to registration has to be investigated.

In the next place, the register is not a mirror of the title; the system of placing every interest on the register was tried in the case of Lord Westbury's Act of 1862, and though that Act broke down after a fair trial, its failure is, by many persons competent to judge, attributed to the insufficient machinery and burdensome provisions of the Act, rather than to any error in principle. And this view seems to be supported by the very able report (1896) by Mr. C. F. Brickdale, the Assistant Registrar, on Registration of Title in Germany and the adjoining countries.

However, whether the principle of the Acts of 1875 and 1897 is right or not, they have been passed, and the best must be made of it.

This principle has been best described as that of drawing a curtain over trusts and equities in favour of purchasers and chargees who deal with the person in whose name the land is registered, and on the faith of the register. An equally important principle, however, is that, though the person on the register is given certain powers of disposition, and a purchaser or chargee may rely on those powers so far as they are not fettered by entries in the register, yet the person on the register must not exercise the statutory powers without the concurrence of the person who, if the land were unregistered, would be able to carry out the transaction. In other words, the intention of the Acts is not to alter the law or to affect the rights of beneficiaries, but merely to establish a new mode of procedure. There

may, perhaps, be one exception to this, namely, the powers conferred on a guardian of an infant, or on a committee of the estate of a lunatic, under L. T. A., 1875, s. 88; but a guardian or committee would be well advised not to do anything in relation to registered land which he would not have power to do if the land were unregistered. The principle of the Acts, it will be observed, is identical with that of the Conveyancing Bill, put forward by the Incorporated Law Society, which was to assimilate the title of land, so far as circumstances permit, to the title to stock, and thus sweep trusts, equities, questions of pedigree, questions on the construction of settlements, wills, powers, and such like, off the title, so far as regards purchasers and mortgagees.

The Conveyancing Bill (*see* Appendix) in effect sets up a system of registration of title, but constitutes every owner his own registrar, thus getting rid of the official element.

Part II.

A land registry is established for freehold and leasehold land with a freehold or leasehold reversion in England and Wales: L. T. A., 1875, ss. 5 and 11. Short statement of machinery.

The register, which is not open to public inspection, is to be subdivided into three registers, called respectively the Property Register, the Proprietorship Register, and the Charges Register: L. T. R., 1898, r. 2. The register. The principal function of the Property Register is to give a description of the land: *ib.* r. 3. There is also to be a statement of the value of the land in this register. The function of the Proprietorship Register is to show who may deal with the land by way of transfer, registered charge, or mortgage by deposit, and to disclose any cautions, inhibitions, or restrictions affecting his power of disposition. The function of the Charges Register is to disclose incumbrances, including notices of leases and of mortgages by deposit.

There is to be a map index, showing all registered land, and an index of proprietors' names. Map and index. The former, but not

the latter, is to be open to the general public for inspection: L. T. R., 1898, rr. 12 to 14.

Who may
apply to be
registered.

(a) Beneficial
owner.

The beneficial owner of any freehold or leasehold land held for a sufficient term or interest (s. 11) may apply to be registered as the proprietor thereof (L. T. A., 1875, ss. 5 and 11), or to have a trustee registered (in the Act called a nominee).

The existence of incumbrances is no bar to registration (L. T. A., 1875, s. 5), and undivided shares may be registered: L. T. A., 1897, s. 14; L. T. R., 1898, rr. 61 and 67.

(b) Trustees
for sale and
mortgagees.

Persons holding land on trust for sale with the consent of the person (if any) whose consent to a sale is necessary, may also register the land held by them (L. T. A., 1875, s. 68), as may also mortgagees whose power of sale has arisen: *ib.*

(c) Tenant for
life.

Settled land may be registered in the name of the tenant for life: L. T. A., 1897, s. 6.

A copy of the settlement may be filed in the registry, but will not affect purchasers or mortgagees who will have no notice of it: L. T. A., 1875, s. 83 (1); L. T. A., 1897, s. 6 (6); L. T. R., 1898, r. 72.

On the death of a tenant for life, the trustees of the settlement are to apply for the registration of the remainderman: L. T. A., 1897, s. 6 (4).

Two kinds of
title: absolute
and pos-
sessory.

There are two kinds of title which may be applied for, namely, an absolute title and a possessory title: L. T. A., 1875, s. 6; L. T. R., 1898, r. 45.

Absolute
title.

If the application is for an absolute title, the title has to be investigated and accepted by the registrar: *ib.* The investigation is to be made in accordance with the usual conveyancing practice (L. T. R., 1898, r. 31), and the registrar may refer the title to one of the examiners of title, and may act on his opinion: *ib.* The registrar has power to accept a holding title: L. T. A., 1875, s. 17 (3).

Qualified
title.

He may also accept a title as established subject to a particular defect, and the applicant is then registered with what is called a qualified title.

Absolute

The applicant has to deliver to the registrar an abstract

of title in the usual form, together with all such deeds and documents relating to the title as the applicant has in his possession or under his control, including opinions of counsel, contracts for or conditions of sale, requisitions, replies, and other like documents : L. T. R., 1898, r. 29.

title, procedure.

An advertisement of the application is to be inserted in the *London Gazette* and a local newspaper : *ib.* r. 32.

Provision is made as to notices to tenants, and to enable objections to the registration to be made : *ib.* rr. 34 to 36.

If the application is for a possessory title, there is no investigation of title, and the applicant is registered upon his own statement of title (L. T. R., 1898, Form 1), accompanied by a conveyance on sale or lease to him, or by a statutory declaration of possession and the latest document of title (if any) in his custody : L. T. R., 1898, rr. 17 and 43.

Possessory title.

The application is to be accompanied by sufficient particulars, by plan or otherwise, to enable the land to be fully identified on the ordnance map : *ib.*

Any necessary surveying for this purpose is to be done by the land registry surveyors, and, in a compulsory district, free of charge : L. T. R., 1898, r. 216.

If a deed or other document of title is delivered with the application, it is to be marked with notice of the registration and with the number of the title : *ib.* r. 20.

Registration with an absolute title of freehold land operates to confer on the person registered, who is throughout the Acts termed the registered proprietor, a statutory estate in fee simple, free from incumbrances except incumbrances entered on the register, but subject to the rights of persons claiming under him, and in the absence of an entry to the contrary on the register to certain liabilities (s. 18) which are assumed to affect all registered land : L. T. A., 1875, s. 7.

Estate conferred under absolute title.

These liabilities include :—Quit rents, manorial rights, death duties, land tax, tithe rentcharge, easements and profits *à prendre*; also rights to minerals arising before 1898, and leases or tenancies for any term not exceeding twenty-one years : L. T. A., 1875, s. 18, as amended.

Liabilities which are assumed to affect all registered land.

Death duties. Under L. T. A., 1897, s. 13, a purchaser or registered chargee appears to take free from death duties unless notice thereof is entered on the register. There is a question whether this section extends in favour of mortgagees by deposit.

A note as to exemption from any of these liabilities may be entered in the Property Register: L. T. A., 1897, First Schedule; L. T. R., 1898, r. 3.

Estate under possessory title. Registration of freehold land with a possessory title has the same operation as registration with an absolute title, except that all estates rights and interests existing or capable of arising at the time of first registration are paramount to the fee simple conferred by the registration: L. T. A., 1875, s. 8.

Leaseholds. Registration of leasehold land with absolute and possessory titles has an effect corresponding to registration of freehold land with absolute and possessory titles: L. T. R., 1898, rr. 47, 48 and 49.

Land certificate. On every first registration after 1897 a land certificate is to be prepared (L. T. A., 1875, s. 10; L. T. A., 1897, s. 8 (4) (i)), which is either to be delivered to the proprietor or deposited at the registry: L. T. A., 1897, s. 8 (4) (i).

Transfer of registered land. A transfer of registered land is effected by deed of transfer in a prescribed form: L. T. A., 1875, s. 29; L. T. R., 1898, rr. 79, 156; Form 14. The transfer however will not be registered without production of the land certificate: L. T. A., 1897, s. 8 (1).

Absolute title. In the case of an absolute title a transfer of freehold land for valuable consideration operates to confer on the transferee a statutory estate in fee simple free from incumbrances and discharged from all unregistered equities and rights affecting the estate of the transferor, but subject to the incumbrances entered on the register and, in the absence of an entry to the contrary on the register, to the liabilities which are assumed to affect all registered land: L. T. A., 1875, s. 30.

Possessory title. In the case of a possessory title a transfer of freehold land for valuable consideration has the same operation as

INTRODUCTION.

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in the case of an absolute title, except that it does not override the estates rights and interests which are paramount to the fee simple conferred by first registration: *ib.*, s. 32.

Corresponding provisions in each case apply to leaseholds: L. T. R., 1898, rr. 92 and 93.

A transfer made without valuable consideration has the same operation as a transfer for value, except that the transferee takes subject to unregistered equities affecting the estate of the transferor; but persons deriving title by registered disposition for value under the transferee are in the same position as if their transferor had been a transferee for valuable consideration: L. T. A., 1875, s. 33.

Voluntary transfer.

The registered proprietor may by deed charge his land by a registered charge: *ib.*, s. 22, and L. T. R., 1898, r. 156. The deed of charge has to be in a prescribed form (*ib.*, and L. T. R., 1898, Form 39), and may contain certain special stipulations: L. T. R., 1898, rr. 106 and 107.

Registered charge upon registered land.

The charge, however, will not be registered without production of the land certificate: L. T. A., 1897, s. 8 (1).

A certificate of charge is to be issued: L. T. A., 1875, s. 22; L. T. A., 1897, s. 8 (4) (i).

In the absence of an entry to the contrary in the register, a covenant by the registered proprietor to pay is implied in every charge: L. T. A., 1875, s. 23; see however, as to land charges, L. T. R., 1898, r. 116.

Implied covenant.

In the absence of express agreement, a chargee is not entitled to the land certificate (L. T. A., 1897, s. 8 (4)); but if he sells under his power of sale, or forecloses, a new certificate will be issued: *ib.*; see also L. T. R., 1898, r. 207.

Chargee not entitled to land certificate.

A transfer of a charge is also effected by a deed of transfer in a prescribed form: *ib.*, s. 40; L. T. R., 1898, rr. 114, 156; Form 44.

Transfer of a registered charge.

The transfer will not be registered without production of the charge certificate: L. T. A., 1897, s. 8 (1).

A registered charge when paid off is discharged by the registrar cancelling the entry on production of the certifi-

Discharge of a registered charge.

cate of charge and an instrument of discharge signed by the chargee and attested: L. T. A., 1875, s. 28; L. T. R., 1898, r. 112; Form 43.

A partial discharge may be made in like manner either as to part of the land or as to part of the money secured: L. T. A., 1897, 1st Schedule; L. T. R., 1898, r. 112; Form 43.

**Incumbrances
prior to first
registration.**

Incumbrances created prior to first registration may, on first registration with an absolute title, be either noted on the register (L. T. R., 1898, r. 40), or may at any time, whether the title registered is absolute or possessory, be actually registered (*ib.*, r. 121); provision is made as to the discharge of such incumbrances: L. T. A., 1875, s. 19; L. T. R., 1898, rr. 179, 180.

Subject to an entry on the register to the contrary, registered charges rank in the order of their registration: L. T. A., 1875, s. 28; but see L. T. R., 1898, rr. 121 and 160.

**Mortgage by
deposit of
land certi-
ficate or
certificate of
charge.**

The registered proprietor of land or of a charge may create a lien on the land or charge by deposit of the certificate: L. T. A., 1897, s. 8 (last paragraph).

Provision is made for enabling persons entitled to be registered to dispose of land by registered disposition without being themselves registered: L. T. A., 1897, s. 9 (6); L. T. R., 1898, r. 153.

**Bankruptcy
and liqui-
dation.**

Provision is also made for special matters arising on bankruptcy or liquidation: L. T. A., 1875, s. 43; L. T. R., 1898, rr. 138 to 145.

**Unregistered
dispositions
of registered
land.**

The registered proprietor or other person having a sufficient interest can create estates and interests in registered land off the register as if the land were unregistered, but such estates and interests are liable to be defeated by a registered disposition for valuable consideration unless duly protected as provided by the Acts: L. T. A., 1875, ss. 49, 53—59; L. T. R., 1898, rr. 200—202.

**Cautions,
inhibitions,
restrictions
and notices.**

Unregistered estates and interests may be protected by means of cautions, inhibitions, and restrictions (L. T. A., 1875, ss. 53 to 58); and in the cases of mortgages by

deposit by notice to the registrar: L. T. R., 1898, rr. 200—202.

A caution merely entitles the cautioner to notice of any intended transfer or charge, it may affect the whole or a part of the property comprised in a title; when once used it is exhausted, subject to an order to the contrary by the registrar, and must be renewed, if so required, or an inhibition applied for.

An inhibition while in force is a complete bar against Inhibitions. any registered disposition, and can be placed on the register with the consent of the registered proprietor or under an order of the registrar or of the Court: L. T. A., 1875, s. 57; L. T. R., 1898, r. 194.

A restriction may be placed on the register with the Restrictions. assent of the registered proprietor. It may restrain registered dispositions without certain consents or unless purchase-money is paid to persons named: L. T. A., 1875, s. 58.

Restrictions and inhibitions are the machinery by which settled land is to be protected from wrongful dispositions by the registered proprietor: L. T. A., 1897, s. 6 (2).

A purchaser of registered land is not, apart from express Evidence of agreement, entitled to any evidence of title other than the title. evidence of title disclosed by the register, including evidence as to incumbrances entered at first registration, except the statutory declaration subsequently mentioned, and except, in the case of a possessory title, an abstract of the title to estates and rights paramount to the fee simple conferred by first registration (L. T. A., 1897, s. 16), which a purchaser must get in without reference to the register.

The vendor of registered land must furnish the purchaser with a statutory declaration as to the liabilities which are assumed to affect all registered land: *ib.*; L. T. A., 1875, s. 18.

Consents to registered dispositions may be given by the Consents to instrument of disposition: L. T. R., 1898, r. 155. dispositions.

The burden and benefit of restrictive covenants may be Restrictive covenants.

- entered on the register : L. T. A., 1875, s. 84 ; L. T. R., 1898, rr. 3 and 102 ; Form 36.
- Notice of trusts.** Neither the registrar nor any person dealing by registered disposition for value with registered land or a charge is to be affected with notice of any trust : L. T. A., 1875, s. 83 (1), as amended.
- Compulsory registration.** Power is given to make registration with a possessory title compulsory on sale by Order in Council in some county or part of a county named in the order : L. T. A., 1897, ss. 20, 22 (6) (a).
- Orders in Council.** By Orders in Council dated the 18th July, 1898, and the 20th October, 1898, pursuant to this power (*see* Chap. V., *infra*), registration with a possessory title is to be compulsory on sale in the County of London, but so that, as regards the portions of the county therein mentioned, its operation is not to commence until the dates therein specified. The result is that the first compulsory area consists of the parishes of Hampstead, St. Pancras, St. Marylebone, and St. George's, Hanover Square, as from the 1st January, 1899.
- Removal of land from register.** Land not situated in a compulsory district may be removed from the register : L. T. A., 1897, s. 17.
- Statutes of Limitation and Prescription Acts.** The Statutes of Limitation, and the Prescription Acts, do not apply to registered land, but certain limited provision is made for rectification of the register, at the discretion of the Court, in a case where a person would have acquired a title if the land had not been registered : L. T. A., 1897, s. 12.
- Insurance fund and guaranteed titles.** An insurance fund is set up for the purpose of indemnifying persons dealing on the faith of the register : L. T. A., 1897, s. 7. One result is in effect to convert "the absolute" title of the L. T. A., 1875, into a "guaranteed title," that is, a purchaser will, as a general rule, either get his land or indemnity : *ib.* s. 7 (2).

Part III.

- The powers of the registered proprietor discussed.** It is proposed now to consider somewhat at length the powers conferred on a registered proprietor ; some of the following remarks are, in effect, re-stated as notes on the

sections referred to, but the repetition seems desirable in order to obtain a collected view of the subject.

Now it should be carefully noted that it will not be safe to assume, that because a person is dealing with the registered proprietor, the latter will have power to carry out the intended transaction, even supposing that there is no restrictive entry on the register.

The only safe rule then will be to ascertain in each case whether or not the Acts or Rules confer the required authority. This brings one to the consideration of what the register is intended to show.

I. The register shows who may convey, or, to use the somewhat inelegant term of the Acts, "transfer" the freehold or leasehold land comprised in the title or any part of it, with or without consideration: L. T. A., 1875, ss. 29—39; L. T. A., 1897, s. 9; L. T. R., 1898, rr. 79—105, and 127. Power to transfer.

The power to transfer, includes the right to transfer in consideration of a rent-charge (L. T. R., 1898, r. 83), which will be entered in the charges register; to transfer with or without mines and minerals, or mining easements (*ib.*, rr. 1 (4), 87—89; Forms 23—28); to transfer subject to restrictive covenants (*ib.*, r. 102); to transfer by way of exchange (*ib.*, rr. 103, 104); and to transfer so as to effect a partition: *ib.*, r. 105.

With the exception of easements for mining purposes, neither the Acts nor the Rules appear to confer any power on the registered proprietor as such (the Acts use the term "proprietor" which, like some other expressions used in the L. T. A., 1875, seems to have been adopted in order to shock conveyancers) to create any easement, right or privilege in or over land. The result is that any such easement or right must be created off the register under s. 49 of the L. T. A., 1875, and entered as an incumbrance in the charges register: L. T. R., 1898, r. 7. Also, if required, the easement or right, if it is a hereditament, may be registered under s. 82 of the L. T. A., 1875. No power to grant easements.

Now it is impossible to understand why any distinction

should be drawn between an easement for mining purposes and an easement for any other purpose, and it is suggested that when either a new Act is passed or new Rules issued, this inconvenient distinction should be abolished.

It is inconvenient, for instead of the purchaser of the easement being enabled to rely on the register, or in the case of a possessory title on the register plus the title prior to registration, he will require an abstract of title of the dealings with the property off the register, at any rate since the last transfer for value on the register; and it will by no means follow that the person to whom the title to the property is deduced; is the same person as the registered proprietor. The last transfer for value on the register is mentioned because (*see* L. T. A., 1875, ss. 30—32), it seems that such a transfer operates, as a rule, to create a good root of title. There is, however, this difficulty, namely, that the last transfer for value may have been made to what the L. T. A., 1875 (*see* s. 5), calls a nominee, but which merely means a trustee. In this case the legal estate will probably be in the registered proprietor, unless he has conveyed it off the register, and the title to the equity will probably have to be taken up prior to the last transfer for value.

It is understood that, in some quarters, the opinion is held that the L. T. R., 1898, rr. 1 (4), 88, do not confer any power to create easements for mining purposes by way of registered disposition. If this be the correct view, the position will be even worse than that above stated.

No power
to lease.

This power to grant easements has been treated rather fully, as the power to grant leases is almost precisely on the same footing. For leases will be granted off the register under L. T. A., 1875, s. 49, and notice entered up under s. 50.

It would undoubtedly be a boon if the Acts conferred on the registered proprietor as such an unlimited power to grant leases, and it does not seem that such a power would in any way be inconsistent with the principle of the Acts, though it is conceived that the power could hardly be con-

ferred by the Rules. Of course, it must be made possible to fetter the power by cautions, inhibitions, and restrictions (*see* L. T. A., 1875, ss. 53—59; L. T. R., 1898, rr. 188—196) in like manner as the power to transfer or charge may now be fettered. At the same time, it may be advisable to provide that certain leases, for instance, those authorized under the Settled Land Acts, 1882 to 1890, or s. 18 of the Conveyancing and Law of Property Act, 1881, and all leases at a rack rent for a term not exceeding twenty-one years, should be good as against cautioners and inhibitors subject to an entry to the contrary on the register.

Another point with regard to leases is that where under s. 50 of the L. T. A., 1875, notice of a lease is entered up against a title, the notice is not to affect proprietors of incumbrances registered prior to the registration of the notice.

Entry of
notice of a
lease.

Now this may have been all very well when the L. T. A., 1875, was passed, but now, under the C. A., 1881, s. 18, a mortgagor while in possession is, subject to any contrary intention expressed in the mortgage deed, authorized to grant certain occupation and building leases. No question seems to arise as regards the occupation leases, for these come within s. 18 of the L. T. A., 1875, which declares that certain rights and interests shall not be deemed incumbrances for the purposes of the Act. But it seems that it must be wrong for a building lease which would be binding on the mortgagee if the land were unregistered, not to be so binding because the land happens to be registered.

It is possible, of course, that the Courts may hold that the C. A., 1881, overrides the L. T. A., 1875, and it is hoped they will, but the point ought not to be open to question.

The form of an ordinary transfer (Form 14) prescribed by the Rules, will cause some difficulty unless it is capable of modification (*see* L. T. R., 1898, r. 146) so as to enable the legal estate in fee simple to be passed to the purchaser before he is registered.

Forms of
transfer and
completion.

For the form, as it stands, would only operate to pass a life estate in the land till registration (*see* L. T. A., 1875, s. 29) and it must also be observed that the transfer will not be registered, unless the execution is admitted by the transferor, till after the expiration of three clear days from the time when notice of its lodgment at the registry is despatched to the transferor: L. T. R., 1898, r. 161.

It seems, however, that the form of transfer can, and should in most cases, be so modified; but, if it cannot, then it will become the practice, in cases where the vendor cannot hand over the land certificate to secure the purchase-money, to take a conveyance of the legal estate off the register in addition to the transfer. For it cannot be that it is intended that all completions should take place at the registry, where clearly, at present, there is not sufficient accommodation; nor can it be intended that the transferor should be bound to attend in person.

Some means, therefore, in the above cases, must be devised to enable the purchaser to pay over his purchase-money in safety before he is registered.

Now if he lodges a caution (costs 10s.) against the registered proprietor, that will prevent any disposition being registered without notice to him, and if he obtains the legal estate without notice of any equities, he will acquire priority over those equities, if any. However, it does not follow that the registered proprietor will be entitled to convey the legal estate off the register; in this case it will be more convenient for the vendor to obtain a certificate which can be handed over on completion, than to trace the legal estate off the register. Indeed the usual practice will, it is conceived, be for the vendor to obtain, where a property is sold in lots, a separate certificate for each lot sold: L. T. A., 1897, s. 8 (2).

Receipts for
purchase-
money.

The C. A., 1881, s. 56, authorizes a purchaser to pay his purchase-money to a solicitor, who produces a deed containing or having endorsed a proper receipt; and the T. A., 1893, s. 17, enables a trustee to permit his solicitor to have the custody of a deed containing such a receipt.

Now it will be found that the prescribed forms of transfer do not contain any receipt clause, nor is there any express power to endorse a receipt, though it is conceived that no objection would be made to modifying the forms to this extent. If the modification is not permitted separate conveyances in nearly every case will be required.

It is noticeable that while the forms of transfer of stock have been closely studied, for some inscrutable reason the forms used for the conveyance of real estate have been ignored. It is submitted that it is unscientific thus to brush aside the accumulated knowledge of the past and to begin *de novo*.

II.—The register shows who may charge the land by means of a registered charge (L. T. A., 1875, ss. 22—28; L. T. A., 1897, s. 9), which enables an annual or periodical payment to be charged: L. T. R., 1898, rr. 106—120. It is said advisedly “by means of a registered charge,” for the Acts contain no provision for enabling the registered proprietor as such to mortgage the land by way of conveyance subject to a proviso for redemption. If such a transaction is required, resort must be had to the power to transfer already discussed. Thus, in exercise of that power the proprietor must transfer the fee simple to the mortgagee who will be registered as proprietor; and then there will be a mortgage in common form executed off the register which will show that the mortgagee is entitled subject to the right of redemption of the mortgagor. If the mortgage deed is properly stamped, no further stamp will be required on the transfer of the land: L. T. R., 1898, r. 164. To protect the equity of redemption, the mortgagor will lodge a caution, or with the consent of the mortgagee will register an inhibition.

Power to create a registered charge.

Mortgages by way of transfer of the statutory estate with a separate deed.

Of course a mortgage in common form can be executed off the register (L. T. A., 1875, s. 49), and the mortgagee can be protected against the registered dispositions of the proprietor by an inhibition or a caution. But this course seems objectionable, and ought not to be adopted if it can be avoided.

Mortgages off the register protected by inhibitions.

First, it means that the mortgagee, to be safe, must investigate the title and make the like searches and inquiries as if the land were unregistered, except that, as before explained, when dealing with the question of easements, the last transfer for value on the register may in some cases be taken as the root of title.

And secondly, it is asking too much to expect a mortgagee to be satisfied with a mere caution, which, in the ordinary course, will only entitle him (L. T. R., 1898, rr. 190, 260; Form 53) to have fourteen days' notice, sent to two addresses, of an intended disposition; while, on the other hand, an inhibition operates as a complete block on proceedings at the registry until further order.

Mortgages off the register in addition to registered charges.

Again, it may be suggested that the form of charge (Form 39) may be modified so as to pass the legal estate in the land to the mortgagee. For instance, the form might perhaps be made to correspond with the statutory form of mortgage contained in the Third Schedule to the C. A., 1881. But, assuming that such a modification might be made, it is difficult to see, supposing that a registered charge has the effect which it ought to have, that any good can be obtained by it. For no chargee should advance his money till he has received the certificate of charge, unless he advances his money on the faith of the deposit of the land certificate, and this obviously cannot be arranged if the certificate is in the custody of a prior incumbrancer.

Moreover, in addition to the objections advanced to the scheme of taking mortgages off the register, this modification is also open to the objection that, when the charge is transferred, the transferee will require a conveyance of the legal estate as well; and it is by no means clear that the form of a transfer of a charge (Form 44) may be modified to effect this, any more than it is clear that the form of a registered charge may be made to pass the legal estate.

Effect of a registered charge.

And now to consider the effect of a registered charge.

Section 22 of the L. T. A., 1875, confers a power on the

registered proprietor as such to create registered charges, and the amendment of the section contained in the First Schedule to the L. T. A., 1897, makes it plain that if the land is registered with a possessory or qualified title (L. T. A., 1875, ss. 7—9), the chargee and persons deriving title under him cannot, as regards the title prior to first registration, or as regards any interest covered by the qualification, obtain a better title against the land than the registered proprietor had to the land.

Now the first thing that occurs to one about this section is the absence of any provision corresponding to that in s. 30 (which relates to the estate of a transferee for value), for over-riding, in favour of the chargee, other estates and interests. Yet it is apprehended that the chargee gets a charge on the statutory estate of the registered proprietor, free from all unregistered estates and equities (*see* s. 49), with the possible exception of Crown debts, and of death duties, unless, as seems to be the case, the expression “registered purchaser” in s. 13 of the L. T. A., 1897, includes a registered chargee.

If, then, this view is correct, it will not become the practice, where the title is absolute, for an intending chargee to make any searches outside the register.

In addition to the power conferred by the Act to create a registered charge, it should be observed that the L. T. R., 1898, rr. 124—126, enable the chargee to create a sub-charge and provide for a certificate being issued to the sub-chargee: *see also* L. T. A., 1897, s. 22 (c).

The proprietor of a registered charge has power, subject to an entry to the contrary in the register, to go into possession: L. T. A., 1875, s. 25. And it is apprehended that the Courts will, in virtue of this power, hold that when in possession the registered chargee has the like power to grant leases as a mortgagee in possession (*see* C. A., 1881, ss. 2 (vi), 18), but the point is not free from doubt [s. 9 (2) of the L. T. A., 1897, makes no reference to s. 18 of the C. A., 1881, but this does not seem to bear much on the point]; and for this reason it may after all become the practice to take a mortgage off the register,

The powers of the proprietor of a registered charge. To enter subject to mortgagee's liability to account.

either in addition to a transfer of the land or in addition to a registered charge.

To lease.

But assuming that a chargee in possession has the power to lease, it would only be good to the extent to which the proprietor of the land, with the consent of incumbrancers, might have granted it: C. A., 1881, s. 18 (15). Now the proprietor may have been a trustee without a power to lease, and it seems only right that, if his beneficiaries have allowed him to be placed on the register and to create a registered charge, the Acts should have in this case expressly conferred the power to lease on the chargee when in possession, so as to bind the beneficiaries.

The Statutes
of Limitation.

Under s. 12 of the L. T. A., 1897, a proprietor of a registered charge, who goes into possession, will never acquire a title against the proprietor of the land without applying to the Court for rectification under that section, or for foreclosure under s. 26 of the L. T. A., 1875. In other words, the chargee until foreclosure, or perhaps rectification, will always be liable to account for the rents and profits to the proprietor of the land from the time of taking possession.

It will be observed that this difficulty with regard to the continued liability of the proprietor of a registered charge to account, can be obviated by the mortgagee taking a transfer of the land on the register; this plan will, however, seriously impede the smooth working of the register, and it is submitted that if only registered charges can be made to work, they ought to be adopted.

To foreclose.

Next, the L. T. A., 1875, s. 26, confers on the proprietor of a registered charge, subject to an entry to the contrary on the register, the usual power to take proceedings for foreclosure or sale. Then s. 27 of the L. T. A., 1875, and s. 9 (1) (2) of the L. T. A., 1897, provide for the exercise of the power of sale conferred by the charge; and now that all instruments of charge are to be executed under seal (L. T. R., 1898, r. 156), every proprietor of a registered charge will, save in very special cases (*see ib.*, r. 116), have the mortgagee's power of sale conferred by the C. A., 1881: *see* L. T. A., 1897, s. 9 (2).

To sell.

Thus it is seen that the intention of the Acts is to confer on the proprietor of a registered charge powers similar to those incidental to an ordinary mortgage; no doubt there are difficulties and omissions, but as a whole it is submitted that, in simple transactions and where a lump sum only is to be advanced, a registered charge will be found to afford a sufficient security. As to how far the system of registered charges will be adopted, must depend largely on what stipulations are allowed to be inserted: see L. T. R., 1898, rr. 106, 107; Form 39.

How far registered charges may be relied on.

Now to turn to the question of further advances.

The clause in the Bill, now the Act of 1897, which would have altered the law as respects a registered charge for securing further advances was very properly struck out in Committee, as it went beyond the necessities of the case. The clause, in effect, provided that the proprietor of a registered charge for securing further advances should, subject to any entry to the contrary in the register, be entitled to make these further advances *notwithstanding notice of any subsequent charge*.

Further advances secured by registered charges.

Now all that is required is, that the chargee should be able to make further advances until he has *actual* notice of a subsequent charge, and that the mere registration of a subsequent charge, or the lodgment of a caution or other entry in the register, should not operate as actual notice: Cf. *Hopkinson v. Rolt*, 9 H. L. C. 514.

It should be observed, then, that the Acts do not contain any provision for determining the effect of a registered charge to secure further advances, though the Rules, which have practically the same force as the Acts, prescribe a form for that purpose: L. T. R., 1898, r. 108; Form 41.

There are two modes by which a mortgage to secure further advances may be effected.

Modes of securing further advances by registered charge.

First, the charge may be taken to secure the whole amount ultimately intended to be advanced; in this case, assuming that the registration of a subsequent charge or the lodgment of a caution or other entry is not notice, the chargee may safely make further advances up to the

amount named in the register, without any further search. But where the chargee has received actual notice, it would not be safe for him to make further advances, unless he is under an obligation to do so: *West v. Williams*, (1898) 1 Ch. 488.

Secondly, the charge may be taken in the prescribed form to secure the advance made at the time, and future advances, with or without a limit. Then, assuming that the prescribed form is valid, no alteration will be required in the register when any future advance is made.

The charge, when registered, it is submitted, operates as an "entry to the contrary in the register," within s. 28 of the L. T. A., 1875, so as to give priority to all advances made over any subsequently registered charge, and so that no search for subsequent charges, cautions or other entries will be necessary when any further advance is made.

If this be so, no second chargee will be safe where the first charge is entered to secure unlimited further advances, unless it is held that actual notice of the second charge postpones the further advances, except such of them as the chargee is under an obligation to make.

The result is that, until it is judicially determined whether or not the mere registration of a subsequent charge or the lodgment of cautions or other entries operate *ipso facto* as notice; and until it is determined how far actual notice is effectual, a registered chargee should not, unless he has also obtained a lien by means of the land certificate, make any further advance without an official search (L. T. R., 1898, rr. 224—228) by telegram or otherwise, nor should a second chargee advance any money until the first charge has been crystallised on the register.

Practice
where mort-
gage is to
secure a
current
account.

Now it is obvious that, where an advance may be required on the instant, as in the case of a mortgage to secure a current account, a search even by telegram is out of the question, hence, where the mortgagee is not disposed to accept the lien created by the deposit of the land certificate, probably the practice for some time to come will be to take a mortgage off the register, coupled with a transfer of the land on the register, but in most cases (*see*

remarks under heading III., *infra*) the deposit of the certificate, or the deposit plus a registered charge, will be accepted as sufficient: *see* the L. T. A., 1897, s. 8.

Except where the registered charge is to secure an account current, or further advances, there will not, as a general rule, be any necessity for the first chargee to stipulate for the custody of the land certificate (L. T. A., 1897, s. 8 (4); L. T. R., 1898, r. 207); but if the registered title is possessory he ought to obtain the custody of the title deeds, as he will require these to prove his title should he exercise his power of sale.

Custody of land certificates and of title deeds.

An intending second or subsequent chargee should inquire from the first or prior chargees as to the state of their mortgage debts. The prior chargees, if they know of the intended subsequent charge, would seem to be bound by their answers as between themselves and subsequent chargees (*Ibbottson v. Rhodes*, 2 Vern. 554), but the transferee of a prior charge would not appear to be so bound (L. T. A., 1875, ss. 40 and 83 (1), as amended); hence a subsequent chargee should either obtain a rectification of the register, so as to show the exact amounts due on the prior charges, or else lodge cautions against the prior chargees.

Second and subsequent charges.

Again, the provisions of the Acts as regards registered charges do not appear altogether well adapted to the case of a security comprising several pieces of land registered under different titles, inasmuch as the whole amount secured would appear on each title; but it is apprehended that the registrar, in such a case, would in exercise of his discretionary power (L. T. R., 1898, r. 276) enter cross-references to the other titles, and thus practically meet the difficulty. It may, however, be found convenient in the case of trust deeds to secure debentures, that the land held under each title should be transferred to the trustees. And this leads up to the further question, which the Courts will probably be asked to decide, namely, whether or not, having regard to the position of a registered chargee, trustees who have power to invest on real securities have power to

Difficulty where security comprises land registered under different titles.

Query, power for trustee to invest on a registered charge.

lend money on the security of a registered charge: *cf.* L. T. R., 1898, r. 228.

Mortgages by
deposit.

III.—The register shows (L. T. A., 1897, ss. 6 (8), 8, last paragraph) who may create a lien on the land or registered charge by depositing the land certificate or the certificate of charge.

It is not, perhaps, too much to say that the manner in which mortgages by deposit may be effected, is the most satisfactory feature of the Act. It will be convenient here to deal with the provisions respecting these mortgages in detail.

Mortgages
of settled
land.

- (a) First, then, L. T. A., 1897, s. 6 (8), recognizes that the tenant for life or other person registered as proprietor of settled land has, in virtue of such registration, the inherent right to create a lien on the fee simple or registered leasehold interest, subject, of course, to any entry on the register to the contrary.

That there should be some entry on the register to prevent the tenant for life from creating a lien by deposit, otherwise than in accordance with the powers to mortgage conferred by the Settled Land Acts or the settlement, is clear. But it is equally clear that, inasmuch as the register does not give notice that the proprietor is only a tenant for life, if there is no entry against creating the lien, the mortgagee by deposit ought to get a valid security just as much as if he had taken a registered charge.

If this were not so, on the deposit of the certificate the mortgagee would have (as was, in fact, necessary under the L. T. A., 1875) to investigate the title behind the register to ascertain that the proprietor was entitled to the fee simple or to the registered lease, for his own benefit.

There is no difference in principle between giving the tenant for life a power to create a registered charge and a power to create a lien, hence the L. T. A., 1897, is right in giving him both powers.

Again, there can be no objection, on the score that the tenant for life may desire to mortgage his life estate, to

restricting his power to create a lien by deposit of the certificate, for such a mortgage must be created by deed off the register, and the mortgagee is no more entitled to the custody of the land certificate than he would now be entitled to the title deeds relating to the fee simple.

(b) Next, to turn to L. T. A., 1897, s. 8 (1).

Production
and noting
of certificate
on all
registered
dealings.

This sub-section ensures that, on practically every dealing on the register, except the lodgment of cautions, inhibitions, and notices of incumbrances, the certificate shall be produced and noted up.

Cautions, inhibitions, notices of leases (L. T. A., 1875, s. 50), or of deposit of the certificate, are of necessity excepted from the operation of this sub-section, for they are lodged by persons claiming to have interests which conflict with the powers conferred on the registered proprietor. Moreover, the delay which might occur before the certificate could be produced, might be fatal to the cautioner, inhibitor, or incumbrancer.

However, whenever the certificate is brought to the registry to be noted up, entries of all cautions, inhibitions, and notices in force will be made on the certificate. (Forms 61, 62, and notes thereto.)

(c) Then sub-s. (3) makes the grant of a new certificate conditional on sufficient advertisement being made and evidence furnished as to the loss or destruction of the original.

Grant of new
certificates
only on
sufficient
evidence of
loss or de-
struction.
Entry of
notice of
deposit.

(d) In addition to these safeguards a mortgagee by deposit may (L. T. A., 1897, s. 22 (6) (f)) give notice of the deposit to the registrar, by registered letter or in writing, who will enter the notice on the register. The notice will have the effect of a caution (L. T. R., 1898, r. 200), that is, will entitle the mortgagee to fourteen days' clear notice before any disposition by the proprietor is registered. And further, no new certificate will be issued to the proprietor without notice to the mortgagee: *ib.* r. 201.

Some customers of bankers may, perhaps, object to this Effect of non-

service of
notice.

entry being made on the register, or even to the lodgment of a caution.

The result of omitting to take this precaution would be that, if a new certificate were issued and registered dispositions made, the mortgagee would not be entitled to indemnity: L. T. A., 1897, s. 7 (3). Having regard to s. 8 (3), it seems improbable that a new certificate would be issued without the knowledge of the mortgagee, so that, no doubt, in special cases bankers will take the risk. As to other risks, see L. T. A., 1897, ss. 9 (6), 12.

It may, perhaps, be contended that, if the entry is not made on the register, the mortgagees' priority (as respects any advance made subsequently to the creation of an interest under s. 49 of the L. T. A., 1875, which is protected by a caution) would be postponed in favour of a purchaser of such an interest, on the ground that the interest would never have been created if the proper entry had been made. However, the answer is, that if a person dealing under s. 49 ought to search for cautions, &c., he ought equally to inquire as to the custody of the land certificate.

To make the mortgagee lose his priority as well as the benefit of the insurance fund would be harsh, and it is conceived it will not be so held.

Guaranteed
titles.

In passing, attention may be drawn to the fact that the establishment of the right to indemnity under sect. 7 in effect converts what the L. T. A., 1875, calls an "absolute title" into a "guaranteed title;" in other words, the proprietor for value is to have either his land or charge, or compensation in money. The right to indemnity will, of course, extend to possessory titles, except as regards defects arising prior to first registration, and also to qualified titles, except as regards defects covered by the qualification.

Issue of
certificates
on first
registration
as of course.

(e) It was thought that, unless certificates were issued on first registration as a matter of course, the mere fact of applying for a certificate would, at any rate in country places, indicate that the proprietor was contemplating a mortgage by deposit, and this was considered objectionable.

Provisions will be found (s. 8 (4) (i) (ii) (iii) and (iv)) which entirely meet this objection, and enable the proprietor to obtain his certificate, and to have it noted up from time to time, free of cost.

- (f) Another difficulty which bankers and others felt was that, under the L. T. A., 1875, the register afforded them no means whatever of ascertaining roughly the value of the security by means of the prices paid, or the sums of money advanced in respect of the property. Now, pursuant to L. T. A., 1897, s. 22 (6) (h), it is provided (L. T. R., 1898, r. 203) that the registrar is to enter on the certificate and on the register the price paid, value declared (*see* Forms 1, 2, 3 and 6), and the original amount of every charge. Also, Rule 222 enables the back entries in the register, whether withdrawn or not, to be inspected; so that an intending mortgagee, if he desires, can, under an order from the proprietor, ascertain who paid the price or made the advance. Entry of value of land.

- (g) Then, where it is required to negotiate a loan with no delay, the mortgagee can require the proprietor to have a search made by telegram, and have the answer sent to the intending mortgagee: L. T. R., 1898, rr. 225—227. Searches by telegram.

As already mentioned, this search by telegram will not meet the case where a mortgage is on foot for securing an account current, because it would not, for instance, as a rule, do to delay the cashing of a cheque across the counter until a reply telegram could be received, and in most cases neither the mortgagor nor his solicitor would be present, so that the search could not be made.

- (h) And now to consider the last paragraph of s. 8, upon which the power to create mortgages by deposit depends. The last paragraph of s. 8.

The first thing to remark is, that the paragraph contains no express saving of the estates and rights, which are Possessory titles.

paramount to the fee simple conferred on registration with a possessory title. This defect is, however, made good by the form of certificate : Form 61.

When, therefore, the deposit of the certificate is made, it will be known that if the title is possessory, the lien is subject to defects of title prior to first registration ; or if the title is by the certificate expressed to be qualified, the lien will be subject to the qualification.

Title deeds.

Also, where the title is possessory, the custody of the title deeds relating to the title prior to registration should be obtained, to enable the title, when the lien is enforced, to be proved.

General rule as to mortgages by deposit.

The general rule as regards an equitable mortgage by deposit is, that it operates to the extent only of the beneficial interest of the mortgagor in the property : *Fisher, Mortgages*, 4th ed., p. 54.

Thus, if a trustee entitled in fee improperly deposits title deeds of unregistered land by way of mortgage, and then absconds, no lien is created as against the beneficiaries (*Manningford v. Toleman*, 1 Coll. 670 ; *Newton v. Newton*, 4 Ch. App. 143) ; nor is the position altered if the trustee has, in his character of executor, power to sell or mortgage the property : *Re Morgan*, 18 Ch. D. 93.

Rule altered as regards registered land.

This paragraph, however, rightly alters the rule as regards registered land.

Thus, the deposit of the certificate by a trustee will, unless there is an entry to the contrary on the certificate or register, create a lien as against his beneficiaries, for it is to be equivalent to a lien created "by an owner entitled in fee simple for his own benefit."

Suppose land is vested in a sole trustee on trust for sale with no power to mortgage : if the land were unregistered the fact that he was a mere trustee would, in the ordinary course, appear from an investigation of the title ; on the other hand, if the land were registered, the trust would not be shown ; hence the necessity for the alteration of the rule.

Entries on the register restrictive of

Given a sufficient power for the registered proprietor as such to create mortgages by deposit, it is clear, as already

said, that means must be devised for either prohibiting or restricting that power in the proper cases.

the power to mortgage by deposit.

Now cautions, inhibitions and restrictions are *prima facie* bars only to registered dispositions (L. T. A., 1875, ss. 53 to 59), and not even if notice of the deposit is entered on the register can the mortgage strictly be called a registered disposition. But when it is borne in mind that the mortgage is no longer in the position of an unregistered right created under s. 49 of the L. T. A., 1875, it is submitted that it must be treated, at any rate for some purposes, as a registered disposition, and the date of the deposit must be regarded as the date of the disposition.

The two Acts must be read together, and this is the only way good sense can be made of them. That mortgages by deposit originally could not be regarded as registered dispositions is admitted, but the point is how they are to be regarded now.

Assuming that inhibitions and restrictions can be framed (see L. T. R., 1898, r. 276) so as to fetter mortgages by deposit, the next question is, how is one directed against charging to be construed? Would such an one merely operate to fetter registered charges, or does the greater, in this case, include the less?

Inhibitions and restrictions against charging.

But for the fact that, where an incumbent of a benefice is registered, provision is made (L. T. A., 1897, s. 15 (1) (ii); L. T. R., 1898, rr. 197—199; Form 59) to inhibit him from creating mortgages by deposit, it would have been clear that an entry against charging applied equally against mortgaging by deposit; and even as it is, it seems to have that effect. At any rate a mortgagee would be ill advised to make an advance in the face of such an entry.

If, then, a mortgage by deposit is treated as a registered disposition, an intending mortgagee must search as from the date when the certificate was last noted up, by telegram or otherwise, for cautions, inhibitions, restrictions and notices, before he takes the deposit.

What searches an intending mortgagee by deposit must make.

This suggests the question whether a like search will be necessary before each further advance is made, for instance, under a mortgage to secure a current account.

No searches
on further
advances.

If it is, then the scheme of mortgages by deposit must be abandoned, for a search is out of the question. The general opinion seems to be that such a search is not necessary.

For if mortgages by deposit are regarded as registered dispositions so as to make them subject to cautions, &c., then obviously it follows that a caution lodged, after the deposit, can have no more effect than a caution lodged against the proprietor of the land, after a registered charge has been effected for securing a current account.

Again, it is submitted that, if a mortgagee on making a further advance does not search, he would not be stamped with notice of any caution or other entry made since the date of the original advance. For it seems that such an entry is no more notice than the mere registration of a deed in the Middlesex Registry is notice: *Bedford v. Backhouse*, 2 Eq. Ca. Ab. 615; *Williams v. Sorrell*, 4 Ves. 389.

Effect of
notice of
caution, &c.,
on intending
mortgagee.

Though it has been submitted that mortgages by deposit are subject to cautions, it is not meant by that, that the registrar is to send notice to the cautioner of the intended mortgage, for unless notice of the deposit is entered on the register the registrar may never know of the deposit at all, and even in this case he will not know till after the transaction has been carried out.

Cautions.

Herein, then, lies the distinction between a registered disposition proper and a mortgage by deposit. In the case of the former the caution must be warned off before the disposition can be registered, and the transferee or registered chargee will, when registered, take free from the equities of the cautioner; in the case of the latter the caution will not be warned off, but as the intending mortgagee who discovers a caution has notice that the cautioner has, or has claimed to have, some interest in the land (Form 12), he must ascertain that the interest will not affect the intended mortgage.

Inhibitions
and restric-
tions.

Again, suppose the intending mortgagee discovers an inhibition to the effect that "Until further order, no charge is to be created," or a restriction to the effect that "No charge is to be made without the consent of A. B."

The effect of the inhibition would, it is conceived, be to put the intending mortgagee on inquiry as to the whole title off the register, while the restriction would render it necessary to obtain the consent of A. B.

Of course, if, before making a further advance, the mortgagee searches and finds an entry made since the date of the original advance, he would be in the same position with regard to the further advance as if he were making a new loan.

Now it will be observed, that it is not suggested that mortgages by deposit are subject to the rights protected by cautions, inhibitions, restrictions, notices of leases, &c., on the ground that they are "registered rights" within the meaning of the last paragraph of s. 8, but because of notice.

Meaning of
"registered
rights" in
last para-
graph of s. 8.

It is conceived that the "registered estates, charges or rights" in this paragraph only include such estates, charges or rights, as require the production of the certificate before they can be registered.

If it be held otherwise, then it becomes necessary to supply the words "registered before the deposit is made," else the whole scheme of mortgages by deposit to secure an account current falls to the ground.

One useful result of the plan of registered charges is, that it enables a second mortgage by deposit to be created. For, as it is not necessary in many cases for a first chargee to have the custody of the land certificate, the proprietor of the land remains able to deposit it. The mortgage, of course, will be subject to the power of sale conferred on the chargee, hence the mortgagee must give him notice of the deposit.

Second
mortgages
by deposit.

CHAPTER II.

LAND TRANSFER ACT, 1875

(38 & 39 VICT. c. 87).

An Act to simplify Titles and facilitate the Transfer of Land in England. [13th August, 1875.]

Whereas it is expedient to make further provision for the simplification of the title to land, and for facilitating the transfer of land, in England :

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :—

PRELIMINARY.

Short title. 1. This Act may be cited as the Land Transfer Act, 1875.

This Act and the L. T. A., 1897, may be cited together as the Land Transfer Acts, 1875 and 1897 (*see* L. T. A., 1897, s. 26). The Acts must be read with the Land Transfer Rules, *infra*, which in some cases supersede the provisions of the L. T. A., 1875.

The preamble to this Act and the words in italics following are repealed by the Statute Law Revision (No. 2) Act, 1893; the repeal, however, does not affect (*see* s. 1) the construction of the Act.

Application
of Act.

2. This Act shall not apply to Scotland or Ireland, and land shall not be registered under this Act unless it is of freehold tenure or is leasehold held under a lease which is either immediately or mediately derived out of land of freehold tenure; but for the purposes of this Act customary freehold, in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a

purchase from the customary tenant, shall not be deemed to be land of freehold tenure.

S. 2.

PRELIMINARY.

See on this section, 42 Sol. J. 535.

This section must be read with the amendment contained in the First Schedule of L. T. A., 1897, which is as follows:—

If, at any time, land is found to have been registered with absolute or qualified title contrary to the provisions of this section, the registration shall not be annulled, but shall be deemed an error not capable of rectification under the principal Act, and any person suffering loss thereby shall be indemnified accordingly.

Amendment
in L. T. A.,
1897,
1st Schedule.

This amendment applies where, the title having been investigated, it did not appear that the land was copyhold. The registered proprietor will obtain the statutory fee simple as if the land were enfranchised, and the lord of the manor will be indemnified on the same footing, it is conceived, as if there had been a forfeiture: see note, *infra*.

The section, as so amended, must also be read with s. 67 (*infra*) and L. T. R., 1898, r. 73, which enables freeholds and copyholds, where indistinguishable, and also land of uncertain tenure, to be registered, provided the registrar enters a note in accordance with that section and rule.

Freeholds and
copyholds
indistinguish-
able.

The rule in the case of an absolute title appears to override the above-mentioned amending provision, for if a note has been entered under the rule, then the registration is without prejudice to any right that may arise if it is subsequently ascertained that the land is copyhold. Hence, the lord of the manor might, it is conceived, treat the land as if it were unregistered, and so would not require any indemnity. What estate the purchaser from a registered proprietor would acquire is not clear, but it is conceived that he would get an equitable interest as under a contract for the sale of the customary fee simple, but not any right to indemnity.

Where, on the other hand, copyholds have been registered by mistake without any such note, some difficulty arises on the construction of this section as amended.

Copyholds
registered by
mistake effect
an enfran-
chisement.

A copyholder incurs a forfeiture by alienating his land by a common law assurance: see Elton on Copyholds, 2nd ed. p. 229. This, however, would not seem to apply to a simple deed of grant at the present day, on the ground that it has no tortious operation, that is, it passes no more than the interest of the grantor (*ib.*); but it is by no means clear that a forfeiture would not be occasioned by alienation by registered disposition where the title registered is absolute.

SS. 2, 3, 4.
PRELIMINARY.

Rights of the
lord in the
case of registra-
tion with a
possessory
title.
Possessory
titles not
affected by
amendment.

If this is so, then, if the registration be with an absolute or qualified title (the qualification not relating to the tenure), it seems clear that this section, read with the amendment, has the effect of enfranchising the copyhold so far as regards registered dispositions, and the lord of the manor, instead of a forfeiture, is entitled to indemnity under L. T. A., 1897, s. 7 (1). If this view is correct the registrar would, it is conceived, have a right of action against the first registered proprietor to recover the indemnity under L. T. A., 1897, s. 7 (6). If the registration was with possessory title, then, it seems, the lord of the manor could remove the land from the register in like manner as if a note had been entered under L. T. R., 1898, r. 73.

The amendment does not cover the case of registration with a possessory title, hence in such a case it seems that the registration might be annulled and no indemnity given.

In order to remove a small part of the land from the register, it would probably be sufficient to enter a short description of the copyhold portion on the register and state, as prescribed by r. 73, that the registration does not affect this portion.

Rectification.

As to rectification, see ss. 95—97, *infra*, and L. T. A., 1897, s. 7 (1).

Indemnity.

For the provisions relating to indemnity, see L. T. A., 1897, ss. 7, 21.

Land.

For the meaning of the word "land" in the Acts, see L. T. A., 1897, s. 24, and note thereto.

"Purchase."

"Purchase" in this section is obviously a misprint for purchaser.

Commencement
of Act.

3. *This Act shall come into operation on the first day of January, 1876, which day is in this Act referred to as the commencement of this Act; but any orders or rules, and any appointment to any office, may be made under this Act at any time after the passing thereof, but shall not take effect until the commencement of this Act.*

Repealed: Statute Law Revision (No. 2) Act, 1893.

The L. T. A., 1897, came into operation on 1st January, 1898: s. 25 of that Act.

Construction
of terms in
Act.

4. In this Act, unless there is something inconsistent in the context,—

"Person" includes a corporation and any body of persons unincorporate:

This definition is read into Acts passed after 1889: see Interpretation Act, 1889, s. 19.

What is meant by the expression "body of persons unincorporate," having regard to s. 83 (2), *infra*, which, until repealed, limited the number of co-proprietors capable of being registered, is by no means clear. Possibly its object was to enable a firm of partners, exceeding the prescribed number, to be registered in the name of the firm; however that may have been, in the future land belonging to a firm, boat club, or other unincorporated society, ought to be registered either in the names of the partners or of trustees.

S. 4.
PRELIMINARY.
"Body of persons unincorporate."

"Registrar," "Court," and "General Rules," mean such "Registrar," "Court," and "General Rules," as are in this Act respectively in that behalf mentioned:

"Prescribed" means prescribed by any general rules made in pursuance of this Act:

"The Court of Chancery," and "Court of Appeal in Chancery," and "Her Majesty's Superior Courts," include any Courts in which the powers of the Courts so referred to by name, may be for the time being vested:

This now must be read as meaning the Chancery Division of the High Court of Justice, the Court of Appeal and the High Court: *see* Judicature Act, 1873, ss. 3, 4, 31; Interpretation Act, 1889, s. 13. And as to County Courts, and powers of the Courts generally, *see* ss. 114—117, *infra*.

The business under the L. T. As. is now assigned to the senior judge of the Ch. D.: *see* L. T. R., 1898, r. 234, *infra*; for procedure, *see* *ib.*, rr. 231—247.

Business at Land Registry.

"The Court" is defined by s. 114, *infra*.

"The Land Registry Act, 1862," means the Act passed in the session held in the twenty-fifth and twenty-sixth years of the reign of her present Majesty, chapter fifty-three, intituled "An Act to facilitate the proof of title to and the conveyance of real estates."

See, as to this Act, ss. 125, 126, *infra*, and L. T. A., 1897, 1st Sched.; and Orders of 1st January, 1876, and 29th December, 1897, Chap. V., *infra*.

This definition is omitted from the Revised Statutes.

SS. 4, 5. The definition of land contained in the Act of the
 PRELIMINARY. thirteenth and fourteenth years of the reign of her present Majesty, chapter twenty-one, intituled "An Act for shortening the language used in Acts of Parliament," shall not apply to this Act.

Meaning of the word "land" in the Acts. As to the meaning of the word "land" in the Acts, see L. T. A., 1897, s. 24, and note thereto.

PART I.

ENTRY OF LAND ON REGISTER OF TITLE.

(1.) *Freehold Lands.*

Application for registration with an absolute title or with a possessory title only. **5.** A land registry shall be established, and *on and after the commencement of this Act* the following persons; (that is to say,)

- (1.) Any person who has contracted to buy for his own benefit an estate in fee simple in land, whether subject or not to incumbrances; and
 - (2.) Any person entitled for his own benefit at law or in equity to an estate in fee simple in land, whether subject or not to incumbrances; and
 - (3.) Any person capable of disposing for his own benefit by way of sale of an estate in fee simple in land, whether subject or not to incumbrances,
- may apply to the registrar under this Act to be registered, or to have registered in his stead any nominee or nominees not exceeding the prescribed number, as proprietors or proprietor of such freehold land with an absolute title or with a possessory title only: Provided, that in the case of land contracted to be bought, the vendor consents to the application.

The words in italics are repealed: see Statute Law Revision (No. 2) Act, 1893.

"Not exceeding the prescribed number."

"Not exceeding the prescribed number." These words were probably intended to be repealed (L. T. A., 1897, s. 14(1)); the Rules do not now prescribe any number.

See, as to application for registration, L. T. R., 1898, rr. 17 to 41.

As to forms of applications for registration with an absolute title, see L. T. R., 1898, r. 25, and First Schedule, Form 3; with a possessory title, r. 17, Form 1.

The word "person" includes a corporation: s. 4, *supra*.

The register is subdivided into three registers, called the Property Register, the Proprietorship Register and the Charges Register: L. T. R., 1898, r. 2. And see, as to the register generally, *ib.*, rr. 2—16.

A purchaser should not register without taking a conveyance; for a vendor of land registered with a possessory title should be able to furnish an abstract of title to estates, rights and interests paramount to the estate conferred by first registration: see s. 8, and note thereto, and L. T. A., 1897, s. 16 (v). And a purchaser will never know whether the registrar will give him an absolute title. Registration of a possessory title in the name of the purchaser without a conveyance to him would leave the legal estate outstanding, and bring the contract for sale on to the title; but in the case of an absolute title the mere registration with the consent of the vendor would destroy the vendor's legal estate: see note to s. 7, *infra*.

Power is given for the vendor's solicitor to consent in writing on behalf of the vendor: L. T. R., 1898, rr. 17 and 27. The written consent of a nominee is requisite to his registration, *ib.*

As to the registration of settled land, see L. T. A., 1897, s. 6 Settled Land. (*infra*), and notes thereto, and L. T. R., 1898, rr. 68—72, *infra*.

See, also, s. 68 (*infra*) as to registration by mortgagees and trustees for sale, and s. 69 as to the registration of two or more persons entitled for their own benefit to such estates as together make up such an estate as if vested in one person would entitle him to be registered as proprietor.

As to registration of notice of a lease or sub-lease already registered, see L. T. R., 1898, r. 54.

As to undivided shares, see L. T. A., 1875, s. 83; L. T. A., 1897, ss. 14 (1), 24 (1); L. T. R., 1898, rr. 61 and 67.

As to incorporeal hereditaments and flats, see L. T. A., 1875, s. 82; L. T. A., 1897, s. 24 (1); L. T. R. 1898, rr. 61—63, 65, 66.

As to mines and minerals, see s. 18 (*infra*), and notes thereto; also L. T. R., 1898, r. 64.

As to land below high-water mark, see s. 66, *infra*; L. T. R., 1898, r. 28.

As to Crown lands, see s. 65, *infra*.

On applying for first registration, inquiry should be made whether any caution against registration has been lodged under s. 60, *infra*.

A nominee registered under this section would, it is conceived, be in the same position as a trustee. The power to register a

S. 5.
ENTRY OF
LAND ON
REGISTER OF
TITLE.

The register.

Purchaser
should not
register with-
out a con-
veyance.

Registration
by mort-
gagees and
trustees for
sale.

Undivided
shares.

Incorporeal
hereditaments
and flats.

Mines and
minerals.

Inquiry for
caution
under s. 60.

Registration
of a nominee.

SS. 5, 6, 7.

ENTRY OF
LAND ON
REGISTER OF
TITLE.

nominee is not conferred on a trustee (*see* s. 68), as that would have enabled him to delegate his trust.

As to the effect of abandoning an application, *see* L. T. R., 1898, r. 262.

Abandonment
of applica-
tion.

Evidence of
title required
on applica-
tion.

6. Where an absolute title is required the applicant or his nominee shall not be registered as proprietor of the fee simple until and unless the title is approved by the registrar.

Where a possessory title only is required the applicant or his nominee may be registered as proprietor of the fee simple on giving such evidence of title and serving such notices, if any, as may for the time being be prescribed.

Absolute title,
practice as to,
and meaning
of.

Reference to
conveyancing
counsel.

As to registration with an absolute title, *see* L. T. R., 1898, rr. 25—42, *infra*.

As to leaseholds, *see* L. T. R., 1898, rr. 43, 46, 47.

The registrar may refer the title to one of the examiners of title (L. T. R., 1898, rr. 31 and 248), and he may act on the opinion of such examiner.

The “absolute title” conferred by this Act was merely indefeasible as regards the past. No sooner had a proprietor gained a title against all prior claimants than the law which excluded them came into operation against himself, and rendered his title liable to be defeated by an improper registration for value behind his back.

Guaranteed
title.

This is, to a great extent, altered by the L. T. A., 1897, s. 7, and in its place the registered proprietor for value with an absolute title has a guaranteed title under which he will either have the land or indemnity.

Applications
for registra-
tion with
absolute title
will probably
increase.

Possessory
title.

It is conceived that the number of applications for registration with absolute title will increase, as the registrar may, in the exercise of his discretion under s. 17 (3), *infra*, safely accept, on the opinion of an examiner of title, a good holding title.

As to registration with a possessory title, *see* L. T. R., 1898, rr. 17 to 24.

Estate of first
registered
proprietor
with absolute
title.

7. The first registration of any person as proprietor of freehold land, (in this Act referred to as first registered proprietor,) with an absolute title, shall vest in the person so registered an estate in fee simple in such land, together with all rights, privileges, and appurtenances belonging or appurtenant thereto, subject as follows:

(1.) To the incumbrances, if any, entered on the register;
and

- (2.) Unless, under the provisions of this Act, the contrary is expressed on the register, to such liabilities, rights, and interests, if any, as are by this Act declared not to be incumbrances; and
- (3.) Where such first proprietor is not entitled for his own benefit to the land registered as between himself and any persons claiming under him, to any unregistered estates, rights, interests, or equities to which such persons may be entitled, but free from all other estates and interests whatsoever, including estates and interests of Her Majesty, *her heirs and successors*.

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 ENTRY OF
 LAND ON
 REGISTER OF
 TITLE.

The words in italics are repealed: Statute Law Revision (No. 2) Act, 1893.

First registration with an absolute title confers a statutory estate in fee simple, subject as mentioned in this section.

Effect of first
 registration
 with an abso-
 lute title.
 Legal estate.

If the legal estate was vested in the applicant it is destroyed on registration (inasmuch as it is one of the estates the proprietor is to take free from), and the statutory estate becomes in effect the legal estate discharged from any defects of the old estate, and may, it seems, be disposed of by the registered proprietor off the register under s. 49, *infra*, and would confer priority as between unregistered claimants. For instance, the proprietor might convey the statutory legal estate to A. by way of mortgage to secure a principal sum and further advances, and then convey the equity of redemption to B. by way of mortgage, A. and B. both protecting their mortgages by a caution. A. would then be entitled to make further advances, so as to have priority to B.'s mortgage until B. gave notice to A. of his mortgage. The lodgment of the cautions does not affect the rights of A. and B. *inter se*.

If the legal estate was outstanding in an incumbrancer at the date of registration, whose incumbrance is entered on the register, then, notwithstanding the rule of law that there cannot be two common law fees co-existing in the same land, and that a court of law will undoubtedly take cognizance of the statutory fee for the purposes of registered dealings, it is submitted that the legal fee remains in the incumbrancer for the following reasons:—

- (a) The first saving in this section is sufficient to preserve the legal estate to the incumbrancer; the third saving possibly would also be sufficient if the incumbrance had been created by the registered proprietor.
- (b) The rule of law against two co-existing fees may be sus-

S. 7.
 ENTRY OF
 LAND ON
 REGISTER OF
 TITLE.

- pended by statute, as appears to have been done in the case of a long term enlarged under C. A., 1881, s. 65.
- (c) The scheme of the Act is to ignore the legal estate (*see* s. 5, *supra*) and other incumbrances until they are registered under L. T. R., 1898, r. 121, in order that they may be dealt with off the register. If s. 49 (*infra*) enables a registered proprietor in whom the legal estate is vested to convey it by an unregistered disposition, why should mere registration divest it out of a prior incumbrancer, and enable the registered proprietor to convey it off the register to a subsequent incumbrancer?
- (d) Under L. T. R., 1898, r. 121, an incumbrancer prior to registration cannot, without his consent, be made to accept a registered incumbrance or charge in the place of his unregistered incumbrance. Nor, in case there are several prior incumbrances, is the registration of some to affect the priority of others. But suppose at the date of registration there are three mortgages vested respectively in A. (who has the legal estate), B. and C., and that C. has advanced his money without notice of B.'s mortgage, and that B. alone registers his mortgage under r. 121 (*ib.*); now, if the registration of the land divests A.'s legal estate, C. will be unable, by taking a transfer of A.'s mortgage, to gain priority over B. Where all three incumbrancers register, then no doubt C.'s right to tack might be preserved by an entry in the register under r. 122: *ib.*
- (e) Though, under L. T. R., 1898, r. 101, the registrar has power, in default of a transfer by the registered proprietor, to register a purchaser from a prior incumbrancer who exercises his power of sale, it is submitted that, except in a compulsory district, the purchaser would not be bound to rely on the power conferred by this rule, but that the exercise of the power of sale enables the purchaser to require the registrar to remove the land from the register without the consent of any other person: *Re Winter*, 15 Eq. 156; cf. L. T. A., 1897, s. 17.
- (f) It may be objected that, as the L. T. As. confer no power on the registered proprietor as such to lease, it must be held that the incumbrancer must lose his legal estate. But even if the legal estate were destroyed by virtue only of registration, and notwithstanding the entry of the incumbrance, it would not follow that the registered proprietor would have power to lease. Thus the proprietor might be a trustee for sale where the power to lease has been conferred on a tenant for life of the proceeds of sale by an order made under S. L. A., 1884, s. 7; or, there being no express power, the

tenant for life may have power under S. E. A., 1877, s. 46; *Re Laing's Trusts*, 1 Eq. 416. If, however, the proprietor is entitled for his own benefit subject only to the incumbrance, he would, while in possession, have the usual mortgagor's power to lease: C. A., 1881, s. 18. It is admitted that the statutory fee is a sufficient interest out of which a term may be carved, but as the lessee takes under an unregistered disposition (s. 49, *infra*), he is concerned with the title off the register. And *see* s. 30 (*infra*), as to last registered transfer for value becoming a root of title for the purpose of unregistered dealings.

SS. 7, 8.

ENTRY OF
LAND ON
REGISTER OF
TITLE.

The registered proprietor has a statutory power to transfer free from the old legal estate as soon as the incumbrances entered on the register are discharged. Hence a transfer for value on discharge of such incumbrances would seem to operate to destroy the old legal estate: s. 30, *infra*.

Effect of
transfer for
value.

However, the first registered proprietor, subject to incumbrances, must take a reconveyance of the legal estate if he desires to vest it in himself, though the registrar may vacate the incumbrance (L. T. R., 1898, rr. 16, 179, 180); when reconveyed it becomes extinguished in the statutory fee: and *see* s. 19 (*infra*), as to discharge of incumbrances.

When recon-
veyance
required.

As to registration with an absolute title, *see*, generally, L. T. R., 1898, rr. 25 to 42; and as to entry or registration of incumbrances paramount to the title of the proprietor, *see ib.*, rr. 40, 121; and as to leaseholds, *see ib.*, rr. 48, 121.

Whatever rights are intended to be protected by sub-s. 3 (*supra*), they do not affect a person dealing for value with the registered proprietor by registered disposition or mortgage by deposit: s. 30; L. T. A., 1897, s. 8.

Effect of
sub-s. 3.

The sub-section has the effect, it is conceived, of preserving the rights of a *cestui que trust* of the registered proprietor as against him: and *see* note to s. 95, *infra*.

It is submitted that sub-s. 3 would not prevent a leaseholder, whose land was registered as freehold by mistake, from acquiring the fee.

Leaseholds
registered by
mistake for
freeholds.

The expression "first registered proprietor" is defined by this section.

As to liabilities, rights and interests, declared not to be incumbrances, *see* s. 18 (*infra*), and note thereto; and as to death duties, *see* L. T. A., 1897, s. 13.

Liabilities not
being incum-
brances.

8. The registration of any person as first registered proprietor of freehold land with a possessory title only shall not affect or prejudice the enforcement of any estate, right, or interest adverse to or in derogation of the title of

Estate of
first regis-
tered pro-
prietor with
possessory
title.

S. 8.
ENTRY OF
LAND ON
REGISTER OF
TITLE.

such first registered proprietor, and subsisting or capable of arising at the time of registration of such proprietor; but, save as aforesaid, shall have the same effect as registration of a person with an absolute title.

See, as to registration with a possessory title, L. T. R., 1898, rr. 17—24, *infra*; and as to leaseholds, *ib.*, r. 48.

For form of application, see L. T. R., 1898, r. 17, and First Schedule, Form 1; and for statutory declaration to be made thereon, where required, see *ib.*, First Schedule, Form 2.

Possessory
title does not
ripen into
absolute title.

A possessory title does not ripen into an absolute title by lapse of time, but the proprietor may find it desirable to apply for an absolute title, in which case the paramount estates and interests preserved by this section would alone be investigated by the registrar. A caution may be lodged against the grant of an absolute title by any person protected by this section: see L. T. R., 1898, r. 188.

Effect of first
registration
with a posses-
sory title.

First registration with a possessory title operates to confer a statutory fee simple, as in the case of an absolute title (s. 7), subject to the estates, rights and interests mentioned in this section; these will be referred to as being “paramount” to the fee conferred by first registration.

This section it will be observed is ambiguous, and may be read either, “The registration . . . shall not affect . . . any estate,” and “shall not prejudice the enforcement of any . . . right . . .”, or “The registration shall not affect the enforcement of any estate . . . or prejudice the enforcement of any estate. . .”

The first reading preserves any estate which is adverse to the title of the first registered proprietor at first registration, and seems the natural construction. The same words occur again in describing the effect of a first registration with a qualified title, s. 9 (*infra*), where it seems clear that it is intended to preserve any estate excepted from the effect of registration. A possessory title may be regarded as a particular case of a qualified title, the qualification extending to everything prior to first registration.

The second construction would destroy all estates existing at first registration, and replace them by the statutory estate, merely leaving the paramount owners to enforce their rights against the registered proprietor so long as they subsist.

It is submitted that the first is the correct construction, for on the second construction the legal estate on first registration would become divested out of a mortgagee who by virtue of having got in the legal estate had obtained priority for his incumbrance over that of some other incumbrancer, with the result that he would suddenly lose his priority by the act of the mortgagor.

It seems quite compatible with the scheme of the Acts to regard the statutory fee as a new statutory estate quite independent of the old legal estate: *see* note to last section, "legal estate."

If this be the true view, then, where a legal mortgage is paramount to the fee conferred by first registration with a possessory title, the exercise of the mortgagee's power of sale operates *ipso facto* to remove the land from the register (*cf. Re Winter*, 15 Eq. 156; L. T. R., 1898, r. 121), even though the mortgagee may have been compelled to indorse notice of the registration on his deeds: ss. 71, 72, *infra*.

Of course, the purchaser may adopt the registration with the concurrence of the mortgagor (L. T. R., 1898, r. 101), but in a compulsory district if the mortgagor refuses to concur a difficulty will arise. The right of the purchaser to apply for registration is itself a paramount interest; it would seem, therefore, that the registrar must open a new head of title, and he has power to cancel the old one: *see* L. T. R., 1898, r. 16.

If it should be held that a paramount mortgagee loses his legal estate by mere registration of the equity of redemption, it would seem desirable that mortgages should contain a covenant by the mortgagor not to register without the consent of the mortgagee, who should lodge a caution under s. 60, *infra*.

Estates and interests, to be paramount, must be adverse to the title of the first registered proprietor; his own estate is, therefore, extinguished in the statutory fee.

There is no machinery in the Acts for afterwards extinguishing an estate which is originally paramount. It is conceived, however, that a paramount estate becomes extinguished in the statutory fee when it becomes vested in a registered proprietor: *see* Challis, R. P., 2nd ed., p. 78.

There is no immediate benefit to be obtained by registration with a possessory title, as an abstract of title to all estates, rights and interests which are paramount to the statutory fee simple will be required by a purchaser, and such estates, rights and interests, unless previously got in or released, will have to be conveyed by unregistered disposition. The scheme of the Acts is, as regards purchasers, registered charges and mortgages by deposit, to clear the muddy stream of title as from the date of registration.

The statutory declaration required for the purposes of registration with a possessory title should contain a short statement of the title, so that after a certain number of years contracts for sale may stipulate that the declaration shall form the root of title.

As to the evidence required for registration with a possessory title, *see* s. 6 (*supra*), and L. T. R., 1898, rr. 17—24.

Unless, under r. 18, a note of restrictive covenants is entered on first registration with a possessory title, a purchaser, after the expi-

S. 8.

ENTRY OF
LAND ON
REGISTER OF
TITLE.

Sale by
paramount
mortgage.

Mortgages of
non-regis-
tered land to
contain a
covenant
against
registration.

No immediate
benefit se-
cured by
registration
with posses-
sory title.

Statutory
declaration as
to possessory
title.

Restrictive
covenants.

SS. 8, 9, 10.

ENTRY OF
LAND ON
REGISTER OF
TITLE.

A qualified
title may be
registered in
certain cases.

ration of forty years, will take free from them unless he has express notice.

9. Where an absolute title is required, and on the examination of the title it appears to the registrar that the title can be established only for a limited period, or subject to certain reservations, the registrar may, on the application of the party applying to be registered, by an entry made in the register, except from the effect of registration any estate, right, or interest arising before a specified date, or arising under a specified instrument or otherwise particularly described in the register, and a title registered subject to such excepted estate, right, or interest shall be called a qualified title, and the registration of a person as first registered proprietor of land with a qualified title shall have the same effect as the registration of such person with an absolute title, save that registration with a qualified title shall not affect or prejudice the enforcement of any estate, right, or interest appearing by the register to be excepted.

Qualified
title.

A qualified title is merely an absolute title in respect of which a blot is entered on the register. There is no power to apply for registration with a qualified title. Where on an application for an absolute title, registration with a qualified title is all that can be obtained, it will in most cases be best to register with a possessory title only, as registration with a qualified title merely advertises the defect: *see* L. Q. R., 1890, p. 162. The applicant has, however, a right in such a case to insist on having a qualified title: L. T. R., 1898, r. 42.

Cases where
qualified title
may be
assented to.

There could be no objection to a qualification saving the rights subsisting or capable of arising before a certain date, as where the abstract furnished does not go back for the full forty years, and the rights, if any, prior to the abstract are excepted.

For cases where a qualified title to leaseholds may be usefully accepted, *see* L. T. R., 1898, rr. 49, 52.

Land certifi-
cate given on
registration.

10. On the entry of the name of the first registered proprietor of freehold land on the register, the registrar shall, if required by such proprietor, deliver to him a certificate, in this Act called a land certificate, in the prescribed form; the certificate shall state whether the title of

the proprietor therein mentioned is absolute, qualified, or possessory.

SS. 10, 11.

ENTRY OF
LAND ON
REGISTER OF
TITLE.

A certificate is to be prepared in all cases of first registration after 1897: L. T. A., 1897, s. 8 (4) (i); L. T. R., 1898, r. 19.

It is hoped that, for the sake of uniformity of practice, proprietors who were registered before 1898 will be able to obtain certificates free of charge where none have been issued.

Provisions as
to land
certificates.

Where a certificate has been once issued, no dispositions after 1897 will be registered without its production and noting up, or its loss being duly proved: *see* L. T. A., 1897, s. 8.

The result is that a land certificate will give the state of the registered title at the date of its last noting up, if it has been noted up after 1897, except as regards cautions, inhibitions, notices of leases and incumbrances: *see* notes to L. T. R., 1898, r. 207.

The provisions of this section, as amended by the L. T. A., 1897, s. 8, apply to leasehold land: L. T. R., 1898, r. 55.

A certificate may be deposited at the office of the Land Registry, and will then be noted up from time to time free of charge: L. T. A., 1897, s. 8 (4) (i)—(iv).

A registered chargee is not, in the absence of express agreement, entitled to the certificate, but if he sells under his power of sale or forecloses, a new certificate will be issued: L. T. A., 1897, s. 8 (4); L. T. R., 1898, r. 207.

Registered
chargee.

As to mortgages by deposit of the certificate, *see* L. T. A., 1897, s. 8 (last paragraph), and note thereto.

Mortgages by
deposit.

As to certificates generally, *see* L. T. R., 1898, rr. 204—208.

For prescribed form of certificate, *see* L. T. R., 1898, 1st Schedule, Form 61.

Prescribed
form.

(2.) *Leasehold Land.*

11. A separate register shall be kept of leasehold land, and on and after the commencement of this Act any of the following persons; that is to say,

Application
for registra-
tion with or
without a de-
claration of
title of lessor
to grant lease.

- (1.) Any person who has contracted to buy for his own benefit leasehold land held under a lease for a life or lives, or determinable on a life or lives, or for a term of years of which more than twenty-one are unexpired, whether subject or not to incumbrances; and
- (2.) Any person entitled for his own benefit, at law or in equity, to leasehold land held under any such

S. 11.
 ENTRY OF
 LAND ON
 REGISTER OF
 TITLE.

lease as is described in this section, whether subject or not to incumbrances ; and

- (3.) Any person capable of disposing for his own benefit by way of sale of leasehold land held under any such lease as is described in this section, whether subject or not to incumbrances ;

may apply to the registrar to be registered, or to have registered in his stead any nominee or nominees not exceeding the prescribed number, as proprietor or proprietors of such leasehold land, *with the addition where the lease under which the land is held is derived immediately out of freehold land, and the applicant is able to submit for examination the title of the lessor, of a declaration of the title of the lessor to grant the lease under which the land is held :*

Provided,—

That in the case of leasehold land contracted to be bought, the vendor consents to the application.

Every applicant for registration of leasehold land shall deposit with the registrar the lease of the land in respect of which the application is made, or if such lease is proved to the satisfaction of the registrar to be lost a copy of such lease or of a counterpart thereof, verified to the satisfaction of the registrar ; and such lease or attested copy is in this Act referred to as the registered lease.

Leasehold land held under a lease containing an absolute prohibition against alienation, shall not be registered in pursuance of this Act ; and leasehold land held under a lease containing a prohibition against alienation without the license of some other person, shall not be registered under this Act until and unless provision is made in the prescribed manner for preventing alienation without such license by entry on the register of a restriction to that effect, or otherwise.

The words in italics are repealed : *see* L. T. R., 1898, r. 57 ; Statute Law Revision (No. 2) Act, 1893.

“Not exceeding the prescribed number.” These words were doubtless intended to be repealed : L. T. A., 1897, s. 14 (1).

This section must be read with the amendment contained in the First Schedule to the L. T. A., 1897, which is as follows :—

SS. 11, 12, 13.

A sub-lease shall and a term created for mortgage purposes shall not be deemed a lease within the meaning of this section.

ENTRY OF
LAND ON
REGISTER OF
TITLE.

Leaseholds may now be registered with absolute qualified and possessory titles, and land certificates granted as in the case of freeholds: L. T. A., 1897, s. 22 (6) (b); and see L. T. R., 1898, rr. 43—57, and r. 5; also notes to s. 5, *supra*.

Sublease included, mortgage term excluded. Application for registration of leaseholds.

The provisions of the L. T. A., 1897, with respect to compulsory registration, extend to leaseholds (see L. T. R., 1898, rr. 58—60, *infra*); but registration is not compulsory in the case of a lease having less than forty years to run or less than two lives to fall in: L. T. A., 1897, s. 24 (1); L. T. R., 1898, r. 59, *infra*.

A lease and a reversionary lease to take effect in possession upon or within one month after the expiration of that lease are to be deemed one lease for the purposes of this section: L. T. R., 1898, r. 56.

Lease and reversionary lease.

A term created for mortgage purposes is excluded from the effect of this section even after a sale or foreclosure; this can hardly have been intended, for it frequently happens that on a sale or foreclosure by a mortgagee by sub-demise, the head term cannot be got in and is neglected; where this is the case registration of title to the leasehold cannot, under the section, it seems, be made.

Terms created for mortgage purposes.

A long term assigned by way of mortgage, for instance, to secure portions, could not be registered.

Long mortgage terms cannot be registered. Licenses to assign.

The prescribed manner for preventing alienation without license is to register with a qualified title: L. T. R., 1898, r. 52, *infra*.

12. *An applicant or his nominee shall not be registered as proprietor of leasehold land, until and unless the title to such land is approved by the registrar; and further, if he apply to be registered as proprietor of leasehold land with a declaration of the title of the lessor to grant the lease under which the land is held, until and unless the lessor, after an examination of his title by the registrar is declared to have had an absolute or qualified title to grant the lease under which the land is held.*

Evidence of title required on application.

Repealed: L. T. R., 1898, r. 57, *infra*.

13. The registration under this Act of any person as first registered proprietor of leasehold land with a declara-

Estate of first registered proprietor of

SS. 13, 14.

ENTRY OF
LAND ON
REGISTER OF
TITLE.leasehold land
with a decla-
ration of
absolute title
of lessor to
grant lease.

tion that the lessor had an absolute title to grant the lease under which the land is held shall be deemed to vest in such person the possession of the land comprised in the registered lease relating to such land for all the leasehold estate therein described, with all implied or expressed rights, privileges, and appurtenances attached to such estate, but subject as follows:

- (1.) To all implied and express covenants, obligations, and liabilities incident to such leasehold estate; and
- (2.) To the incumbrances (if any) entered on the register; and
- (3.) Unless the contrary is expressed on the register, to such liabilities, rights, and interests as affect the leasehold estate and are by this Act declared not to be incumbrances in the case of registered freehold land; and
- (4.) Where such first proprietor is not entitled for his own benefit to the land registered as between himself and any persons claiming under him, to any unregistered estates, rights, interests, or equities to which such persons may be entitled,

but free from all other estates and interests whatsoever, including estates and interests of Her Majesty, *her heirs and successors*.

The words in italics are repealed: Statute Law Revision (No 2) Act, 1893; and *see* Interpretation Act, 1889, s. 30.

Compare notes to s. 7, *supra*.

Effect of
registration
of leasehold
land with an
absolute title.

The effect of registration of a person as proprietor of leasehold land with an absolute title is the same as that stated in this section: L. T. R., 1898, r. 47.

In cases where any intermediate leasehold estate exists between the freehold reversion and the leasehold estate which is the subject of registration, the words "lessor" and "lease" in this section and in s. 35 (*infra*) include and apply to a sub-lessor and a sub-lease: L. T. R., 1898, r. 50.

Estate of first
registered
proprietor of
leasehold land
without a decla-
ration of
title of lessor
to grant lease.

14. *The registration of any person under this Act as first registered proprietor of leasehold land without a declaration of the title of the lessor shall not affect or prejudice the enforcement of any estate, right, or interest affecting or in derogation*

of the title of the lessor to grant the lease under which the land is held; but save as aforesaid, shall have the same effect as the registration of any person under this Act as first registered proprietor of leasehold land with a declaration that the lessor had an absolute title to grant the lease under which the land is held.

SS. 14, 15, 16.

ENTRY OF
LAND ON
REGISTER OF
TITLE.

Repealed: L. T. R., 1898, r. 57 (*infra*), and replaced by L. T. R., 1898, r. 48, to cover the case of a possessory title to leasehold land.

No machinery is provided for adapting the new provisions to leaseholds, if any, registered before 1898.

15. *Where an absolute title is required, and on the examination of the title of any lessor by the registrar it appears to him that the title of such lessor to grant the lease under which the land is held can be established only for a limited period or subject to certain reservations, the registrar may, by an entry made in the register, except from the effect of registration any estate, right, or interest arising before a specified date or arising under a specified instrument, or otherwise particularly described in the register; and a title of a lessor registered subject to such excepted estate, right, or interest is in this Act referred to as a qualified title; and the registration of a person as first registered proprietor of leasehold land with a declaration that the lessor had a qualified title to grant the lease under which the land is held shall have the same effect as the registration of such person with a declaration that the lessor had an absolute title to grant the lease under which the land is held, save that registration with the declaration of a qualified title shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted.*

Lessor may be declared to have a qualified title to grant lease in certain cases.

Repealed: L. T. R., 1898, r. 57, *infra*.

16. *On the entry of the name of the first registered proprietor of leasehold land on the register, the registrar shall, if required by the proprietor, deliver to him a copy of the registered lease, in this Act called an office copy, authenticated in the prescribed manner, and there shall be endorsed thereon a statement whether any declaration, absolute or qualified, as to the*

Office [copy] lease given on registration.

SS. 16, 17. *title of the lessor has been made, and any other particulars relating to such lease entered in the register.*

ENTRY OF
LAND ON
REGISTER OF
TITLE.

Repealed: L. T. R., 1898, r. 57, *infra*.

FREEHOLD AND LEASEHOLD LAND.

Regulations
as to exami-
nation of
title by
registrar.

17. The examination by the registrar of any title under this Act shall be conducted in the prescribed manner, provided that—

- (1.) Due notice shall be given, where the giving of such notice is prescribed, and sufficient opportunity be afforded to any persons desirous of objecting to come in and state their objections to the registrar; and
- (2.) The registrar shall have jurisdiction to hear and determine any such objections, subject to an appeal to the Court in the prescribed manner and on the prescribed conditions; and
- (3.) If the registrar, upon the examination of any title, is of opinion that the title is open to objection, but is nevertheless a title the holding under which will not be disturbed, he may approve of such title, or may require the applicant to apply to the Court, upon a statement signed by the registrar, for its sanction to the registration; and
- (4.) The registrar may accept as evidence recitals, statements, and descriptions of facts, matters, and parties in deeds, instruments, or statutory declarations not less than twenty years old.

As to the prescribed manner for examination of title, *see* L. T. R., 1898, r. 31, *infra*.

As to notices, *see* L. T. R., 1898, rr. 32—34.

Appeal where
registrar
refuses the
title.

Though no appeal lies under this section if the registrar refuses the title, but only if he is of opinion that there is a holding title, yet under L. T. R., 1898, rr. 231—233, *infra*, there is a general right of appeal to the Court, and the registrar may take and act upon the opinion on title of the examiners of title: *ib.*, rr. 31, 248.

Sub-s. (4), *supra*, corresponds with V. & P. A., 1874, s. 2 (2).

As to objections to title, *see* L. T. R., 1898, rr. 35—37.

18. All registered land shall, unless, under the provisions of this Act, the contrary is expressed on the register, be deemed to be subject to such of the following liabilities, rights, and interests as may be for the time being subsisting in reference thereto, and such liabilities, rights, and interests shall not be deemed incumbrances within the meaning of this Act; (that is to say,)

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ENTRY OF
LAND ON
REGISTER OF
TITLE.

Liability of
registered
land to ease-
ments and
certain other
rights.

Notes relating to the exemption of any land from the liabilities, rights and interests mentioned in this section, as amended by the L. T. A., 1897, are to be entered in the property register: L. T. R., 1898, r. 3.

Notes of
exemption to
be entered in
property
register.

- (1.) Liability to repair highways by reason of tenure, quit-rents, crown rents, heriots, and other rents and charges having their origin in tenure; and
- (2.) Succession duty, land tax, tithe rentcharge, and payments in lieu of tithes, or of tithe rentcharge; and
- (3.) Rights of common, rights of sheepwalk, rights of way, watercourses, and rights of water, and other easements; and

This section is amended by the L. T. A., 1897, 1st Schedule, as follows:—

This section shall include estate duty, liability to repair the chancel of any church, liability in respect of embankments, sea and river walls, and drainage rights, customary rights, public rights, and profits à prendre, and subject to the provisions of this Act, rights acquired or in course of being acquired under the Limitation Acts.

As to succession and estate duty, see L. T. A., 1897, s. 13, *infra*; L. T. R., 1898, rr. 171—4. Succession and estate duty.

Sub.-s. 2 applies also to registered charges so far as regards succession duty: s. 83 (8), *infra*.

The rights acquired, or in course of being acquired, under the Limitation Acts seem to refer to rights existing on first registration with a possessory title: see L. T. A., 1897, s. 12. Rights under Statutes of Limitation.

- (4.) Rights to mines and minerals; and
- (5.) Rights of entry, search, and user, and other rights

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 LAND ON
 REGISTER OF
 TITLE.

and reservations incidental to or required for the purpose of giving full effect to the enjoyment of rights to mines and minerals, or of property in mines or minerals; and

Sub-ss. (4) and (5) are thus amended by the L. T. A., 1897, First Schedule :—

These sub-sections shall apply only to rights created previously to the registration of the land or the commencement of this Act.

It is submitted that, “the commencement of this Act” can only refer to the commencement of L. T. A., 1897.

Effect of
 amendment.

The effect of the amendment seems to be that rights to mines and minerals are liabilities within the meaning of this section in two cases—

- (i.) where they have been severed previously to the registration of the land, and
- (ii.) where they have been severed before 1898.

In all other cases a transferee of the land obtains the mines and minerals unless there is an entry on the register to the effect that they are excluded: *see* L. T. R., 1898, rr. 1—4, 177.

It will be observed that in case (i) the registration of the land may have been either before or after 1898; and that in case (ii) the severance may have been either before or after first registration.

In the case of an absolute title, the date of first registration can only be ascertained by a search in the register (L. T. R., 1898, r. 222); but in the case of a possessory title it will appear from the land certificate: *ib.*, First Schedule, Form 61.

Abstract of
 title to
 minerals,
 when
 required.

The result seems to be that where the register is silent as to mines and minerals, a purchaser will require an abstract of title to them off the register to show that they were held with the land at first registration and after 1897.

Fortunately it has been the practice for the registrar (*see* sub-s. 7 (c), *infra*) to note the fact when the minerals were included in a title. And now this practice is made obligatory (*see* amendment to last paragraph of this section, *infra*); hence cases where the register will be silent as to minerals will be few: *see* L. T. R., 1898, rr. 176, 177.

A lease of
 mines does
 not effect a
 severance.

A lease of mines without the surface does not effect a severance, and the lease for a term exceeding twenty-one years (sub-s. 7, *infra*) should be protected by notice under s. 50, *infra*, as in the case of any other lease, otherwise the lease would be displaced on a transfer for value: s. 30.

(6.) Rights of fishing and sporting, seignorial and

manorial rights of all descriptions, and franchises, exerciseable over the registered lands; and

- (7.) Leases or agreements for leases and other tenancies for any term not exceeding twenty-one years, or for any less estate, in cases where there is an occupation under such tenancies:

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LAND ON
REGISTER OF
TITLE.

Copies of the leases or agreements for leases mentioned in sub-s. 7 will be required by a purchaser.

Copies of
occupation
leases required
by purchaser.

On an application to register an absolute title a list of the tenants and occupiers must be furnished (L. T. R., 1898, r. 29); and notices will be served on them: *ib.*, r. 34.

As to leases for terms exceeding twenty-one years, and as to leases where the occupation is not in accordance with the lease, *see* s. 50, *infra*, and note thereto.

Provisions as
to other
leases.

Provided as follows:

- (a.) Where it is proved to the satisfaction of the registrar that any land registered or about to be registered is exempt from land tax or tithe rent-charge, or from payments in lieu of tithes, or of tithe rentcharge, the registrar may notify the fact on the register in the prescribed manner; and

As to the prescribed manner, *see* L. T. R., 1898, r. 175.

- (b.) The Commissioners of Inland Revenue shall, upon the application of the proprietor of any land registered or about to be registered upon such declaration being made, or such other evidence being produced as the commissioners require, and upon payment of the prescribed fee, grant a certificate that at the date of the grant thereof no succession duty is owing in respect of such land, and the registrar shall in the prescribed manner notify such fact on the register, and such notification shall be conclusive evidence of the fact so notified in respect of succession duty; and

See now L. T. A., 1897, s. 13, and note thereto; also L. T. R., 1898, Form 51, and L. T. R., r. 173, *infra*.

This provision also applies to registered charges: s. 83 (8), *infra*.

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 REGISTER OF
 TITLE.

- (c.) Where it is proved to the satisfaction of the registrar that the right to any mines or minerals is vested in the proprietor of land registered or about to be registered, the registrar may register such proprietor in the prescribed manner as proprietor of such mines and minerals as well as of the land; and

See also L. T. R., 1898, rr. 1 (4), 176.

- (d.) Where it is proved to the satisfaction of the registrar that the right to any mines or minerals is severed from any land registered or about to be registered, the registrar may on the application of the person entitled to any such mines and minerals register him as proprietor of such mines and minerals in manner hereafter in this Act mentioned, and upon such registration being effected shall enter on the register of the land a reference to the registration of such other person as proprietor of such mines and minerals.

See L. T. R., 1898, rr. 61, 64, and 177, *infra*. "In manner hereafter in this Act mentioned," refers to s. 82, *infra*.

Where the existence of any such liabilities, rights, or interests, as are mentioned in this section, is proved to the satisfaction of the registrar, the registrar may, if he think fit, enter on the register notice of such liabilities, rights, or interests in the prescribed manner.

The last paragraph of this section must be read with the amendment contained in the First Schedule to the L. T. A., 1897, which is as follows:—

Registrar directed to enter mining rights in certain cases as incumbrances.

Registration of easements as incumbrances.

The power conferred on the registrar shall be exercised in all cases where the abstract of title on first registration, or on registration as qualified or absolute, discloses the existence of any such liabilities as are mentioned in sub-sections (4) and (5).

Where an easement is registered as an incumbrance, the dominant and servient tenements shall be defined, if practicable and required by the parties.

Notice of a power of re-entry and of a right of reverter may be entered on the register under this paragraph.

SS. 18, 19.

ENTRY OF
LAND ON
REGISTER OF
TITLE.

Under an open contract for the sale of registered land, a purchaser is entitled to a statutory declaration as to the existence or otherwise of the liabilities mentioned in this section: L. T. A., 1897, s. 16 (1) (i), (ii).

Entry of
notice of
power of re-
entry or right
of reverter.

As to entering notice of the existence of liabilities, rights and interests under this section as amended, and the procedure thereon, *see* L. T. R., 1898, r. 178.

No form is prescribed for the grant of an easement over registered land, except perhaps for mining purposes (L. T. R., 1898, rr. 1 (4), 88); hence other easements will be created off the register under s. 49, *infra*, and noted in the Charges Register under L. T. R., 1898, r. 178. An easement may be registered as a special hereditament under s. 82, *infra*. The original grantee of an easement will require an abstract of title to show the devolution of the property, at any rate since the last transfer for value on the register, which will be a good root of title unless the transferee was a trustee.

Easements,
how granted
and regis-
tered.

Legal estate.

As to registration of minerals severed before registration of the land, *see* sub-s. 7 (d), *supra*; and *see* amendment to s. 49, *infra*; also s. 82, *infra*, as amended; as to registration of minerals severed after registration of the land, *see* L. T. R., 1898, r. 177, *infra*.

Registration
of minerals
severed before
or after regis-
tration of
the land.

Now that the registrar may note up a power of re-entry, the burden of a positive covenant may in this way be imposed, within the rule as to perpetuities, on registered land, provided that the positive covenant is made enforceable by means of a power of re-entry on breach.

Notice of
power of re-
entry, effect
as to positive
covenants.

The Acts do not expressly authorize the benefit of a covenant, whether positive or restrictive, to be assigned by means of a registered disposition: *Renals v. Cowlishaw*, 9 Ch. D. 125; 11 Ch. D. 866; *see*, however, L. T. R., 1898, rr. 3, 146 and 147.

As to transfer
of the benefit
of a covenant.

As to annexing the burden of a restrictive covenant, *see* s. 84, *infra*, as amended.

As to the
burden of
restrictive
covenants.

19. Where upon the first registration of any freehold or leasehold land, notice of an incumbrance affecting such land has been entered on the register, the registrar shall, on proof to his satisfaction of the discharge of such incumbrance, notify in the prescribed manner on the

Discharge of
incumbrance.

SS. 19, 20, 21. register by cancelling the original entry or otherwise the cessation of such incumbrance.

ENTRY OF
LAND ON
REGISTER OF
TITLE.

See L. T. R., 1898, rr. 179 and 180, with which this section must be read.

Part dis-
charges.

This section now applies to part discharge of the debt and also to a release of part of the security: *see* L. T. R., 1898, r. 112, First Schedule, Form 43, *note*.

Legal estate.

The legal estate should be got in where an incumbrance is discharged under this section: *see* s. 7, *supra*, and *note* thereto.

As to the completion of a purchase where there are registered charges, *see* L. T. A., 1897, s. 16, and *note* thereto.

Registered
incum-
brances.

Incumbrances created prior to registration may be registered, and certificates of incumbrance issued (L. T. R., 1898, rr. 121—126); the discharge will then be effected in like manner as in the case of a registered charge: *ib.*

Determina-
tion of lease.

20. The registrar shall, on proof to his satisfaction of the determination of any lease of registered leasehold land, notify in the prescribed manner on the register the determination of such lease.

See as to the determination of leases, L. T. R., 1898, rr. 181—183, *infra*.

This section is confined to the case of the term for which registered leasehold land is held.

Re-entry of
lessor.

Where the lessor has recovered possession by legal process for non-payment of rent, the registrar should not, it is conceived, vacate the lease under this section until the expiration of six calendar months, the period allowed under 4 Geo. 2, c. 28, during which the lessee may apply for relief. Where the lessor has peaceably re-entered for non-payment of rent, *query* whether the registrar may vacate the lease on account of such re-entry: *Howard v. Fanshawe*, 1895, 2 Ch. 581.

See also as to relief for re-entry in other cases, C. A., 1881, s. 14; C. A., 1892, ss. 2—5.

No acquisition
of title by
adverse
possession.

21. *A title to any land adverse to or in derogation of the title of the registered proprietor shall not be acquired by any length of possession; but this section shall not prejudice, as against any person registered as first proprietor of land with a possessory title only, any adverse claim in respect of length*

of possession of any other person who was in possession of such land at the time when the registration of such first proprietor took place.

SS. 21, 22.

ENTRY OF
LAND ON
REGISTER OF
TITLE.

Repealed by L. T. A., 1897, First Schedule, and replaced by L. T. A., 1897, s. 12; *see note on that section, infra.*

PART II.

REGISTERED DEALINGS WITH REGISTERED LAND.

Mortgage of Registered Land.

22. Every registered proprietor of any freehold or leasehold land may in the prescribed manner charge such land with the payment at an appointed time of any principal sum of money either with or without interest, and with or without a power of sale to be exercised at or after a time appointed. The charge shall be completed by the registrar entering on the register the person in whose favour the charge is made as the proprietor of such charge, and the particulars of the charge, and of the power of sale, if any; the registrar shall also, if required, deliver to the proprietor of the charge a certificate of charge in the prescribed form.

Creation of
charges, and
delivery of
certificate of
charge.

This section is amended by the L. T. A., 1897, First Schedule, as follows:—

Charges created under this section are subject to the provisions of the principal Act in respect of qualified or possessory titles.

Amendment.
L. T. A.
1897, First
Schedule.

The effect of the amendment seems to be that a chargee, and persons deriving title under him, cannot, as regards the title prior to first registration or covered by the qualification, obtain a better title against the land than the registered proprietor had to the land.

Effect of
amendment.

There are no express provisions in the Acts to confer a statutory title on a chargee in respect of his charge corresponding to the estate conferred by a transfer of the land for value: s. 30, *infra*. It is conceived, however, that a chargee gets a statutory charge on the statutory estate of the registered proprietor, and would take free from all unregistered estates and equities (*cf.* s. 83 (1), as

Mortgages of
registered
land.

S. 22. REGISTERED DEALINGS WITH REGIS- TERED LAND.	amended) not duly protected, with the possible exception of Crown debts: L. T. A., 1875, s. 49, <i>infra</i> ; as to death duties, <i>see</i> L. T. A., 1897, s. 13, and note thereto.
Possessory title.	In the case of a possessory title, a first chargee will require the title deeds, but he need not stipulate (L. T. A., 1897, s. 8 (4)) for possession of the land certificate unless the charge is to secure further advances: L. T. R., 1898, r. 207.
Second charges.	An intending second chargee should inquire from the first chargee as to the state of the mortgage debt. The first chargee, if he knows of the intending second charge, would seem to be bound by his answers to the inquiry, as between himself and the second chargee (<i>Ibbotson v. Rhodes</i> , 2 Vern. 554), though the transferee of the first chargee would not appear to be bound: L. T. A., 1875, s. 40, as amended; and s. 83 (1), as amended. The second chargee should therefore either obtain rectification of the register to show the exact amount due on the first charge, or lodge a caution against the first chargee. A registered transferee of a charge appears to get a good title either to the charge or to indemnity: s. 40, <i>infra</i> , as amended. Unless a chargee is willing to rely on the deposit of the land certificate, he should not advance his money until the certificate of charge is handed to him: <i>cf.</i> L. T. R., 1898, r. 161.
Mortgages by transfer of the land.	In some cases it may be desirable to mortgage registered land by deed, accompanied by a transfer of the land into the name of the mortgagee, leaving the mortgagor to be protected by caution. This, however, will somewhat dislocate the scheme of registration, and should not be resorted to unless necessary. The transfer in such a case would be registered without payment of any further stamp duty: L. T. R., 1898, r. 164.
Statutes of Limitation.	The advantage of such a mortgage is that, if the mortgagee enters into possession, he can obtain a title to the land under the Statutes of Limitation (L. T. A., 1897, s. 12), whereas the rights of the registered proprietor of land, subject to a registered charge, do not seem capable of ever being barred by lapse of time: <i>ib.</i> For form of charge, <i>see</i> L. T. R., 1898, r. 106; and First Schedule, Form 39, <i>infra</i> . Instruments of charge are required to be executed as deeds and attested: L. T. R., 1898, rr. 156, 157.
Annuity.	As to charging an annuity or other periodical payment, <i>see</i> L. T. A., 1897, s. 9 (3); L. T. R., 1898, r. 108; and First Schedule, Form 40, <i>infra</i> .
Further advances.	As to further advances, <i>see</i> L. T. R., 1898, r. 108, and First Schedule, Form 41; and <i>see</i> note, <i>infra</i> .
Jointures and portions.	As to charges to secure jointures and portions, and an annuity subject to a restraint on anticipation, <i>see</i> L. T. A., 1897, s. 6 (7), and note thereto.

As to charges generally, *see* L. T. R., 1898, rr. 106—120, *infra*.

For special stipulations which may be inserted in charges, *see* L. T. R., 1898, r. 107, First Schedule, Form 39, *infra*.

Where any other special provisions are required, they may be contained in a mortgage deed off the register, with a transfer of the land into the name of the mortgagee.

The provisions of the C. A., 1881, enabling a mortgagor to require a transfer instead of a reconveyance (s. 15), and the power given to a mortgagor to inspect title deeds in the possession of a mortgagee (s. 16), and the restriction on consolidation of mortgages (*see* L. T. R., 1898, r. 116), would seem to apply to charges under this section, although a registered charge does not confer any estate on the chargee: *see* C. A., 1881, s. 2 (vi).

As to whether a registered chargee in possession has power to lease, *see* note to s. 25, *infra*.

Ss. 19, 20, 21 (except sub-ss. 1 and 4), 22, 23, and 24 of the C. A., 1881, are expressly applied to charges: L. T. A., 1897, s. 9 (2), *infra*.

The terms of a charge may be altered on the register: L. T. A., 1897, s. 9 (5); L. T. R., 1898, r. 111, Form 42.

As to building society mortgages, *see* L. T. A., 1897, s. 9 (3); L. T. R., 1898, r. 163; and as to discharge of same, *ib.*, r. 113.

The provisions of the L. T. A. as to charges are not well adapted to the case of a security comprising several pieces of land held under different titles, inasmuch as the whole amount secured would appear on each title; but the registrar probably has power (L. T. R., 1898, r. 276) to enter cross references to the other titles. A single charge may affect more than one title: *ib.*, r. 151.

However, whether the power is exercised or not, it may be found convenient in the case of trust deeds to secure debentures to have the usual trust deed off the register, and to have transfers of the fee simple to the trustees, instead of registered charges, the company being protected by a caution.

There may, perhaps, be a doubt whether trustees, having regard to the position of a registered chargee, can safely invest on the security of a registered charge under a power to invest on real securities.

The clause of the Bill (afterwards the L. T. A., 1897) which would have altered the law as respects a registered charge for securing further advances was very properly struck out in committee, as it went beyond the necessities of the case.

The clause, in effect, provided that the proprietor of a registered charge for securing further advances should, subject to any entry to the contrary in the register, be entitled to make these further advances "notwithstanding notice of any subsequent charge." All that is required is that the chargee should be able to make such

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DEALINGS
WITH REGIS-
TERED LAND.

Special
stipulations.
Certain pro-
visions of the
C. A. 1881,
apply to
charges.

Building
societies.

Where secu-
rity comprises
land under
several titles.

Trustees
lending
money on the
security of
registered
land.

Further
advances by
registered
charge.

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REGISTERED
DEALINGS
WITH REGIS-
TERED LAND.

Further
advances.

advances until he has *actual* notice of a subsequent charge, and that mere registration of such subsequent charge or entry of a caution or notice should not be deemed actual notice: *see* L. Q. R., 1887, p. 277; *Hopkinson v. Rolt*, 9 H. L. C. 514.

Though this section does not provide for the case of a charge to secure further advances, a form for that purpose is prescribed: L. T. R., 1898, r. 108, Form 41.

There are two modes by which a mortgage to secure further advances may be effected by registered charge.

First, the charge may be taken to secure the whole amount ultimately intended to be advanced; in this case, assuming that the registration of a subsequent charge or the lodgment of a caution or other entry is not notice, the chargee may make further advances up to the amount named in the register without any further search. But where the chargee has received actual notice, it is conceived that he cannot continue safely to make the further advances unless he is under an obligation to do so: *West v. Williams*, 1898, 1 Ch. 488. The registered first chargee seems to be in the position of a trustee for his mortgagor for the amount of the registered charge which has not been actually advanced; and it is conceived that a second chargee could enforce this equity. However, if the second chargee, after ascertaining by inquiry that a less sum had been advanced than that named in the register, was content to advance his money without having the first charge rectified, so as to show what was actually due thereon, he may, perhaps, be taken to have assented to the first chargee continuing to make advances up to the sum named in the register, notwithstanding that he gave notice of the second charge. At all events, a transferee for value of the first charge would seem to have priority over the second chargee for the whole amount named in the register: L. T. A., 1875, s. 40 as amended, and s. 83 (1) as amended. Hence, assuming that notice of the second charge is effectual against the first chargee, yet, unless the register is rectified, the second chargee should lodge a caution against the first charge so as to ensure that a transferee is also bound by the notice.

Secondly, the charge may be taken in the prescribed form to secure the advance made at the time, and further advances with or without a limit. If the prescribed form is valid, then no alteration will be required in the register when any future advance is made. The charge when registered, it is submitted, is good and operates as an "entry to the contrary in the register" within s. 28 (*infra*), so as to give priority to all advances made over any subsequently registered charge, and so that no search for subsequent charges, cautions, and other entries will be necessary when each further advance is made. If this be so, no second chargee will be safe where the first charge is entered to secure unlimited further

advances, unless it is held that actual notice of the second charge postpones the further advances except as in *West v. Williams, ubi supra*. The result is, that until these questions are judicially settled, the registered chargee should not, unless he has obtained possession of the land certificate (see L. T. A., 1897, s. 8, last paragraph and notes thereto), make any further advance without an official search (L. T. R., 1898, rr. 224—228); nor should a second chargee advance any money until the first charge has been crystallized on the register.

SS. 22, 23.

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DEALINGS
WITH REGIS-
TERED LAND.

The practice then will probably be, when the mortgage is to secure a current account, and the mortgagee is not disposed to accept the lien created by the deposit of the land certificate, to take a mortgage off the register coupled with a transfer of the land, but in most cases the deposit of the certificate or the deposit plus a registered charge will be accepted as sufficient: see L. T. A., 1897, s. 8; also note to last paragraph of that section.

23. Where a registered charge is created on any land there shall be implied on the part of the person being registered proprietor of such land at the time of the creation of the charge, his heirs, executors, and administrators, unless there be an entry on the register negating such implication, a covenant with the registered proprietor for the time being of the charge to pay the principal sum charged, and interest, if any, thereon, at the appointed time and rate; also a covenant, if the principal sum or any part thereof is unpaid at the appointed time, to pay interest half-yearly at the appointed rate on so much of the principal sum as for the time being remains unpaid.

Implied
covenant to
pay charges.

For special stipulations which may be inserted in charges, see L. T. R., 1898, rr. 106, 107; and First Schedule, Form 39, *infra*.

It seems that any variation of the implied covenant can be made by an entry on the register (L. T. R., 1898, r. 107, *infra*); for instance, where a tenant for life is only to pay the interest which accrues during his life.

Variation of
the implied
covenant to
pay.

The implied covenant seems to apply to an annual sum charged under L. T. A., 1897, s. 9 (3).

See, now, as to covenants binding the heirs, as well as executors and administrators of the covenantor: C. A., 1881, s. 59.

The implied covenant to pay seems to operate as if the original charger was joined in each transfer of the charge and entered into a new covenant, thus dispensing with the notice required under J. A., 1873, s. 25 (6).

Effect of
implied
covenant
to pay.

SS. 23, 24.

REGISTERED
DEALINGS
WITH REGIS-
TERED LAND.Covenant for
indemnity
against
charge.Interest
accrued due
on charge.

Land charges.

Notice, however, should be given to the registered proprietor of the land of the transfer of the charge in order that the interest should be paid to the proper person.

Where the land is sold subject to a charge, the vendor will take an indemnity against the implied covenant: L. T. R., 1898, r. 86.

In order to obtain the benefit of the implied covenant the transferee should be registered as proprietor of the charge, but the personal representatives of a deceased chargee may sue on the covenant without being registered (Wms. Exors., 9th ed. 696), and they may transfer the charge before they are registered (L. T. A., 1897, s. 9 (6)); but query whether a transfer of a charge in the prescribed form passes interest accrued due at the date of the transfer: L. T. R., 1898, Form 44. The form should be altered to obviate this question.

As to "land charges," see L. T. R., 1898, rr. 1 (3), 116, and note thereto.

Implied
covenant in
case of
leaseholds to
pay rent, &c.,
and indemnify
proprietor of
charge.

24. Where a registered charge is created on any leasehold land there shall be implied on the part of the person being registered proprietor of such land at the time of the creation of the charge, his heirs, executors, and administrators, unless there be an entry on the register negating such implication, a covenant with the registered proprietor for the time being of the charge, that the person being registered proprietor of such land at the time of the creation of the charge, his executors, administrators, and assigns, will pay, perform, and observe the rent, covenants, and conditions by and in the registered lease reserved and contained, and on the part of the lessee to be paid, performed, and observed, and will keep the proprietor of the charge, his heirs, executors, and administrators, indemnified against all actions, suits, expenses, and claims, on account of the non-payment of the said rent, or any part thereof, or the breach of the said covenants or conditions, or any of them.

As to the effect of the implied covenant to pay principal and interest, see note to last section.

Covenants
for title.

The covenants implied under C. A., 1881, s. 7, D, appear to be wider than those under this section, and should be adopted under L. T. R., 1898, r. 148.

25. Subject to any entry to the contrary on the register, the registered proprietor of a registered charge may, for the purpose of obtaining satisfaction of any moneys due to him under the charge, at any time during the continuance of his charge, enter upon the land charged, or any part thereof, or into the receipt of the rents and profits thereof, subject nevertheless to the right of any persons appearing on the register to be prior incumbrancers, and to the liability attached to a mortgagee in possession.

SS. 25, 26.

REGISTERED
DEALINGS
WITH REGIS-
TERED LAND.

Entry by
proprietor of
charge.

The power of entry conferred by this section may be negatived by special stipulation in the charge: L. T. R., 1898, First Schedule, Form 39 B.

For further rights of the proprietor of a registered charge, *see* ss. 26 and 27, *infra*, and L. T. A., 1897, s. 9.

Though a chargee has at best a leasehold interest in the nature of an *interesse termini* it is conceived that while in possession he would have the like leasing power as a mortgagee in possession (*see* C. A., 1881, ss. 2 (vi), 18); for although that Act does not confer a power to lease on an equitable chargee who has no power to take possession, yet seeing that the intention of the L. T. A.s is to place the proprietor of a registered charge in the same position as a mortgagee of unregistered land save as to the estate, it would be a narrow construction which deprived him of the power to lease; but *see* L. T. A., 1897, s. 9 (2) which does not refer to C. A., 1881, s. 18, this however may be explained on the ground that the L. T. A.s do not confer any power to lease on the proprietor of the land. A difficulty may however arise if the registered proprietor of land was a trustee and had no power with the consent of the incumbrancers to grant the lease: *see* C. A., 1881, s. 18 (15). The proprietor of the charge ought, it is conceived, to have been given by the Acts a power to lease in such a case.

Power of
leasing of
registered
chargee.

As to whether the liability of a mortgage in possession can be determined under the Statutes of Limitation in the case of a registered charge, *see* L. T. A., 1897, s. 12, and note thereto.

Liability of
mortgagee in
possession.

26. Subject to any entry to the contrary on the register, the registered proprietor of a registered charge may enforce a foreclosure or sale of the land charged, in the same manner and under the same circumstances in and under which he might enforce the same if the land had been transferred to him by way of mortgage, subject to a

Foreclosure
by proprietor
of charge.

SS. 26, 27, 28.

REGISTERED
DEALINGS
WITH REGISTERED LAND.

proviso for redemption on payment of the money named at the appointed time.

Power to enforce foreclosure or sale may be negated by special stipulation in the charge: L. T. R., 1898, First Schedule, Form 39 B.

Foreclosure upon originating summons.

As to foreclosure upon originating summons, *see* R. S. C., O. LV. r. 5A.

Foreclosure, how obtained.

On foreclosure, the registrar is to enter the proprietor of the charge as proprietor of the land on production of the order absolute (L. T. R., 1898, r. 110, *infra*), and a new land certificate will be granted: r. 207.

Remedy of proprietor of charge with a power of sale.

27. Subject to any entry to the contrary on the register, the registered proprietor of a registered charge with a power of sale may, at any time after the expiration of the appointed time, sell and transfer the land on which he has a registered charge, or any part thereof, in the same manner as if he were the registered proprietor of such land.

Power of sale and some other provisions of C. A., 1881, apply to charges.

The provisions of ss. 19, 20, 21 (except sub-ss. 1 and 4), 22, 23, and 24 inclusive of the C. A., 1881, extend to registered charges (L. T. A., 1897, s. 9 (2)), and as all instruments of charge are to be executed under seal (L. T. R., 1898, r. 156), the proprietor will, save in special cases (*ib.*, r. 116), have the power of sale conferred by C. A., 1881.

"Any part thereof."

As to the meaning of "any part thereof," *see* note to s. 29, *infra*.

Issue of new land certificate on sale or foreclosure by chargee.

As to the issue of a new land certificate on a sale or foreclosure by a chargee, *see* L. T. A., 1897, s. 8 (4); L. T. R., 1898, r. 207.

Chargee not entitled to land certificate.

Subject to any stipulation to the contrary, a chargee is not entitled to the land certificate (L. T. A., 1897, s. 8 (4)), and it will not be necessary for a first chargee to obtain it, unless the charge is to secure further advances, but in the case of a possessory title he should obtain the deeds.

When a first chargee sells under his power of sale, the purchaser will be registered free from second and other charges: *cf. Re Richardson*, 12 Eq. 398; 13 Eq. 142.

Priority and discharge of registered charges.

28. Subject to any entry to the contrary on the register, registered charges on the same land shall as between themselves rank according to the order in which they are entered on the register, and not according to the order in which they are created.

Sub-charges.

Sub-charges are on the same footing: L. T. R., 1898, r. 125.

As to altering the terms of a charge, *see* L. T. A., 1897, s. 9 (5); L. T. R., 1898, r. 111, First Schedule, Form 42, *infra*.

An entry may be made on the register under this section, having the effect of making charges rank equally: L. T. R., 1898, First Schedule, Form 39, B; *see*, also, as to portion terms, r. 117.

The priority conferred by this section does not apply where an incumbrance created prior to first registration is registered: L. T. R., 1898, r. 121.

SS. 28, 29.

REGISTERED
DEALINGS
WITH REGIS-
TERED LAND.

Alteration of
terms of
charge.

Charges
ranking
equally.

Incumbrances
created prior
to registra-
tion.

The registrar shall, on the requisition of the registered proprietor of any charge, or on due proof of the satisfaction thereof, notify on the register in the prescribed manner by cancelling the original entry or otherwise the cessation of the charge, and thereupon the charge shall be deemed to have ceased.

No reconveyance of a registered charge is necessary; the registered proprietor merely has to sign a discharge: L. T. R., 1898, r. 112, and First Schedule, Form 43, *infra*.

As to discharges by building and other like societies, *see* L. T. R., 1898, r. 113.

It is conceived that a discharge is liable to stamp duty as a reconveyance.

Building and
other like
societies.
Stamp duty.

A chargee may join in a transfer to a purchaser, and be paid off out of the purchase-money: L. T. R., 1898, r. 127, Form 45.

A part discharge of the money secured by a charge may be made under this section (*see* L. T. A., 1897, First Schedule), and the discharge may apply only to part of the land comprised in a charge: L. T. R., 1898, First Schedule, note to Form 43.

Part
discharges.

Transfer of Freehold Land.

29. Every registered proprietor of freehold land may, in the prescribed manner, transfer such land or any part thereof. The transfer shall be completed by the registrar entering on the register the transferee as proprietor of the land transferred, but until such entry is made the transferor shall be deemed to remain proprietor of the land.

Transfer of
freehold land,
and delivery
of land
certificate.

Upon completion of the registration of the transferee the registrar shall, if required, deliver to him a land certificate in the prescribed form; he shall also, in cases where part only of the land is transferred, if required,

SS. 29, 30.
REGISTERED
DEALINGS
WITH REGIS-
TERED LAND.

Transfers to
be executed
as deeds.

Severance of
mines and
minerals from
the land by a
transfer in
prescribed
form.

Exchange
and partition.

Certificates of
leaseholds.

Estate of
transferee for
valuable
consideration
of freehold
land with
absolute title.

deliver to the transferor a land certificate, containing a description of the land retained by him.

See note to next section.

For prescribed forms of transfer, *see* L. T. R., 1898, rr. 79, 80, and First Schedule, Forms 14, 15, *infra*.

Instruments of transfer are to be executed as deeds (L. T. R., 1898, r. 156), and attested: *ib.*, r. 157.

Covenants to indemnify may be added to a transfer (L. T. R., 1898, r. 86); and also, it is conceived, a declaration that the implied covenants for title are to extend to liabilities within s. 18, *supra*: *see* L. T. A., 1897, s. 16 (3).

For forms of transfer operating as conveyances to uses, *see* L. T. R., 1898, r. 81, First Schedule, Forms 16—22, *infra*.

As to transfers in consideration of a rentcharge (*see* L. T. R., 1898, rr. 83, 84); or subject to a rentcharge (*ib.*, r. 85); and as to the transfer of an equity of redemption: *ib.*, r. 86.

The power to transfer the land "or any part thereof" would not, it seems, confer a power to sever by transfer in prescribed form the minerals which have previously been registered with the land (*Re Yates*, 38 Ch. D. 112; *Buckley v. Howell*, 29 Beav. 546); but now, forms are provided for carrying out the transaction: L. T. R., 1898, First Schedule, Forms 23—28, *infra*. Neither do the words "or any part thereof" authorize the grant of an easement: *Dayrell v. Hoare*, 12 A. & E. 356.

As to exchanges and partitions, *see* L. T. R., 1898, rr. 103—106.

For the effect of a transfer, *see* ss. 30—33, *infra*.

On first registration a certificate will now always be prepared: L. T. A., 1897, s. 8, sub-s. 4 (i) (iv).

This section as amended by L. T. A., 1897, s. 8, is now applicable as regards certificates to leasehold land: L. T. R., 1898, r. 94.

30. A transfer for valuable consideration of freehold land registered with an absolute title shall, when registered, confer on the transferee an estate in fee simple in the land transferred, together with all rights, privileges, and appurtenances belonging or appurtenant thereto, subject as follows:

- (1.) To the incumbrances, if any, entered on the register; and
- (2.) Unless the contrary is expressed on the register, to such liabilities, rights, and interests, if any, as are by this Act declared not to be incumbrances, but free from all other estates and interests whatsoever,

including estates and interests of Her Majesty, *her heirs and successors*.

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TERED LAND.

The words in italics are repealed: Statute Law Revision (No. 2) Act, 1893; and *see* Interpretation Act, 1889, s. 30.

Compare s. 7, *supra*.

This section, and ss. 31—33, and 35—38, are by L. T. A., 1897, First Schedule, thus amended:—

In the absence of anything to the contrary in the register or in the transfer or (in the case of leasehold land) in the lease, the word “land” includes the mines and minerals if parcel thereof. Mines and minerals.

See, also, as to mines and minerals, note to s. 18, *supra*.

Notwithstanding the Railways Clauses Act, 1845, s. 77, a transfer to a railway company of registered land, executed after 1897, would seem to pass the mines and minerals without express mention; in practice, however, they should either be expressly included or excluded as required. Transfer to railway company.

On a sale, no searches outside the register appear to be necessary in the case of an absolute title. As to sales of registered land, *see* L. T. A., 1897, s. 16. Searches.

It is conceived that the operation of a transfer is not to pass the estate of the transferor, but to confer a new statutory estate on the transferee. A transfer is an entirely new statutory assurance of land. On registration of a transfer, the statutory estate of the transferor is, it is conceived, destroyed, and a new statutory estate springs up in the transferee. Effect of transfer for value.

If the legal estate remains vested in an incumbrancer whose incumbrance is entered on the register (*see* s. 7, *supra*), then, when the incumbrance is discharged, and the entry thereof on the register vacated before the transfer is registered, the legal estate is one of the estates from which a transferee for value is to take free, and would therefore seem to be destroyed on registration of the transfer. There is no need, therefore, in this case for any conveyance to a purchaser off the register from a legal incumbrancer, as the statutory fee will be equivalent to the legal estate for all unregistered dispositions made under s. 49, *infra*. Legal estate.

Hence, for purposes off the register, the last transfer for value on the register not made to a trustee will become a root of title; but persons dealing off the register must inquire as to equities and powers: *see*, as to leases, note to s. 7, *supra*. Last transfer for value made a root of title.

The prescribed forms of transfer (L. T. R., 1898, Forms 14 *et seq.*) do not provide for the transferee, or any other person joining in the transfer (*e.g.*, S. L. A. trustees), giving any express receipt for Receipt for purchase-money ought to be contained in or indorsed on transfer.

SS. 30, 31, 32.

REGISTERED
DEALINGS
WITH REGIS-
TERED LAND.

As to effect of
transfer for
value on the
power of the
Court to
rectify.

Purchase of
registered
land with
trust money.

Estate of
transferee for
valuable con-
sideration of
freehold land
with qualified
title.

the purchase-money; but it is conceived that the vendors' lien for unpaid purchase-money would be ousted by the last paragraph of this section. The vendor clearly ought not to permit the purchaser to be registered without protecting his lien, as, whether the transfer is for value or not, the purchaser will be able to make a good title on the register. As to the necessity for adding the receipt to the transfer on other grounds, *see* notes to L. T. A., 1897, s. 16, *infra*.

As to liabilities declared not to be incumbrances, *see* s. 18, *supra*.

As to whether registered land becomes allodial, *see* s. 105, *infra*.

As to the effect of a transfer for value on the power of the Court to rectify the register, *see* s. 95, *infra*, and L. T. A., 1897, s. 7 (1), and notes thereto; also L. T. R., 1898, r. 245.

As to the purchase of registered land with trust money, *see* s. 83 (1), *infra*, as amended, and notes thereto.

31. A transfer for valuable consideration of freehold land registered with a qualified title shall, when registered, have the same effect as a transfer for valuable consideration of the same land registered with an absolute title, save that such transfer shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted.

See s. 9, *supra*, and notes to last and next section.

"Land" in this section has the same meaning as in s. 30: *see* note to that section.

As to leasehold land, *see* L. T. R., 1898, r. 92.

Estate of
transferee
for valuable
consideration
of freehold
land with
possessory
title.

32. A transfer for valuable consideration of freehold land registered with a possessory title shall not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the title of the first registered proprietor, and subsisting or capable of arising at the time of the registration of such proprietor; but, save as aforesaid, shall when registered have the same effect as a transfer for valuable consideration of the same land registered with an absolute title.

See notes on s. 30, (*supra*); "land" has the same meaning as in that section.

As to leasehold land, *see* L. T. R., 1898, r. 93.

Sales.

As to sales of registered land, *see* L. T. A., 1897, s. 16, *infra*.

A transfer until registration would, it is conceived, operate merely (assuming that the transferor was beneficially entitled in fee) to pass a life estate; proper words of limitation should, however, be added to the form of transfer; for suggested variations in form, *see* note to L. T. R., 1898, r. 79.

SS. 32, 33.

REGISTERED
DEALINGS
WITH REGIS-
TERED LAND.

The transfer has no further effect till completion (s. 29, *supra*): and *see* L. T. R., 1898, r. 161, which postpones completion for three days unless its execution is admitted by the registered proprietor.

Operation of
transfer until
registration.

A duly registered transfer for value of land registered with a possessory title has the same operation as if the land were registered with an absolute title (s. 30), except that it does not overreach estates, rights and interests paramount to the fee simple conferred by first registration, as to which, *see* s. 8, *supra*, and note thereto.

Effect of a
transfer in
the case of a
possessory
title.

Where, however, the paramount estates, rights and interests have been got in by any registered proprietor, they would seem to be extinguished in the statutory fee: *see* s. 8, *supra*, and note thereto.

A transfer
does not
overreach
paramount
estates.

To hold that an estate once a paramount estate always remains a paramount estate would entirely upset the system of registration set up by the Acts, inasmuch as title would have to be shown off the register in all cases where an incumbrance existed at the time of first registration with a possessory title.

Extinguish-
ment of
paramount
rights.

A purchaser will require an abstract of title to show the devolution of paramount estates since first registration: *see* L. T. A., 1897, s. 16, and note thereto. If this abstract shows that any person got in a paramount estate who is not the registered proprietor who is selling, then the purchaser must search the back entries in the register to ascertain that that person was the registered proprietor at the time when the paramount estate was got in: L. T. R., 1898, r. 222.

Abstracts
relating to
paramount
estates.

On a sale, searches outside the register will be confined to matters relating to paramount interests: and *see* L. T. A., 1897, s. 16, and note thereto.

Searches.

As to death duties, *see* L. T. A., 1897, s. 13.

Death duties.

This section may be read so that the word "affect" relates either to "enforcement" or to "right": *see* s. 8, *supra*, and note thereto. It is conceived that the omission of the word "estate" in this section is not material.

Comparison
with sect. 8.

33. A transfer of freehold land made without valuable consideration shall, so far as the transferee is concerned, be subject to any unregistered estates, rights, interests, or equities subject to which the transferor held the same, but, save as aforesaid, shall, when registered, in all respects, and in particular as respects any registered

Estate of
voluntary
transferee of
freehold land.

SS. 33, 34.

REGISTERED
DEALINGS
WITH REGIS-
TERED LAND.Estate of
voluntary
transferee
where liable
to be
defeated.Voluntary
conveyance
not an objec-
tion to title.

"Land."

Statutes of
Limitation.Voluntary
transfer no
root of title
off the
register.
Nominal
consideration.

dealings on the part of the transferee, have the same effect as a transfer of the same land for valuable consideration.

The estate of a voluntary transferee of registered land is liable to be defeated:—

- (i) By a subsequent conveyance for value off the register by the transferor before the 29th June, 1893: Voluntary Conveyances Act, 1893.
- (ii) By the bankruptcy of the transferor within two years: Bankruptcy Act, 1883, s. 47.
- (iii) By the bankruptcy of the transferor within ten years unless he was solvent at the date of the voluntary transfer without the property included therein: *ib.*

The estate of a purchaser for value deriving title under a voluntary transferee by registered disposition is good under ss. 30—2, and a purchaser of unregistered land seems now safe also: *Carter v. Kenderdine*, 1897, 1 Ch. 778.

"Land" in this section has the same meaning as in s. 30, *supra*.

There is nothing in this section to place a voluntary transferee in a different position, with regard to the Statutes of Limitation, from a transferee for value: *cf.* L. T. A., 1897, s. 12.

For purposes off the register a voluntary transfer will not be a good root of title: *see* notes to ss. 7, 50.

The payment of a nominal consideration would appear to have the effect of placing the transferee in the same position as under a transfer for full valuable consideration, except as regards death duties: *see* L. T. A., 1897, s. 13.

Transfer of Leasehold Land.

Transfer of
leasehold
land,
and delivery
of office
lease.

34. Every registered proprietor of leasehold land may, in the prescribed manner, transfer the whole of his estate in such land or in any part thereof. The transfer shall be completed by the registrar entering on the register the transferee as proprietor of the land transferred, but until such entry is made the transferor shall be deemed to remain proprietor of the land.

Upon completion of the registration of the transferee, if the transfer includes the whole of the land comprised in the registered lease relating to such land, the transferee shall be entitled to the office copy of the registered lease; but if a part only is transferred, the registrar shall, if required, according to any agreement that may have been entered into between the trans-

feror and transferee, deliver to the one the office copy of the registered lease and to the other a fresh office copy of such lease, each of such copies showing by endorsement or otherwise the parcels of which the person to whom such copy is delivered is the registered proprietor.

SS. 34, 35.

REGISTERED
DEALINGS
WITH REGIS-
TERED LAND.

The words in italics are repealed : L. T. R., 1898, r. 57, *infra*.

On a sale of part of the premises comprised in a lease, any apportionment of rent and covenants, and any covenant for indemnity, should be effected off the register: *cf.* L. T. R., 1898, rr. 80, 91; and *see* r. 86. As to whether cross-powers of distress are affected by the Bills of Sale Acts and the rule against perpetuities, *see* 1 K. & E., 5th ed. p. 524.

Sale of part
of premises
comprised in
a lease.

On a sale of lots held under one lease, sub-demises may be made by one purchaser to the other in the usual way: L. T. R., 1898, r. 53.

Sub-demises
by purchaser
of one lot.

As to form of transfer of leasehold land, *see* L. T. R., 1898, r. 91, Form 30.

35. A transfer for valuable consideration of leasehold land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held shall, when registered, be deemed to vest in the transferee the possession of the land transferred for all the leasehold estate described in the registered lease relating to such land, with all implied or expressed rights, privileges, and appurtenances attached to such estate, but subject as follows:

Estate of
transferee
for valuable
consideration
of leasehold
land with a
declaration of
absolute title
of lessor.

- (1.) To all implied and express covenants, obligations, and liabilities incident to such estate; and
- (2.) To the incumbrances (if any) entered on the register; and
- (3.) Unless the contrary is expressed on the register, to such liabilities, rights, and interests as affect the leasehold estate and are by this Act declared not to be incumbrances in the case of registered freehold land;

but free from all other estates and interests whatsoever, including estates and interests of Her Majesty, *her heirs and successors*.

As to meaning of "land," *see* notes to s. 30, *supra*.

SS. 35, 36, 37.

REGISTERED
DEALINGS
WITH REGIS-
TERED LAND.

Possession of
transferee.

Effect of
breach of
covenant.

Effect of a
transfer of
leasehold land
registered
with absolute,
qualified or
possessory
title.

*Estate of
transferee
for valuable
consideration
of leasehold
land with a
declaration of
qualified abso-
lute title of
lessor.*

*Estate of
transferee for
valuable con-
sideration of
leasehold land
without a
declaration of
title of lessor.*

The words in italics are repealed: Statute Law Revision (No. 2) Act, 1893; and *see* Interpretation Act, 1889, s. 30.

The phrase "vest in the transferee the possession of the land" seems objectionable; it by no means follows that on an assignment of a lease the assignee is entitled to possession. If there is a sub-lease the assignee would be merely entitled to the rent and other benefits incident to his leasehold reversion. Notice of the sub-lease should be entered as an incumbrance unless it comes within the third saving: *see* s. 18 (7), *supra*.

Where a breach of covenant has occurred, prior to the registration of the transferee, in respect of which the lessor has a right to re-enter, it is not clear whether this right is not defeated by the registration: *see*, however, the first saving in the section.

As to the effect of a transfer for valuable consideration of leasehold land registered with an absolute, qualified or possessory title, *see* L. T. R., 1898, rr. 92, 93, *infra*.

As to the extension of the words "lessor" and "lease" to include "sub-lessor" and "sub-lease," *see* L. T. R., 1898, r. 50.

36. *A transfer for valuable consideration of leasehold land registered with a declaration that the lessor had a qualified title to grant the lease under which the land is held shall, when registered, have the same effect as a transfer for valuable consideration of the same land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held, save that such transfer shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted from the effect of registration.*

Repealed: L. T. R., 1898, r. 57, *infra*, and replaced by r. 92: *see* notes to last section.

37. *A transfer for valuable consideration of leasehold land registered without a declaration of the title of the lessor shall not affect the enforcement of any estate, right, or interest affecting or in derogation of the title of the lessor to grant the lease under which the land is held; but, save as aforesaid, shall, when registered, have the same effect as a transfer for valuable consideration of the same land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held.*

Repealed: L. T. R., 1898, r. 57, *infra*.

38. A transfer of leasehold land made without valuable consideration shall, so far as the transferee is concerned, be subject to any unregistered estates, rights, interests, or equities subject to which the transferor held the same; but, save as aforesaid, shall, when registered, in all respects, and in particular as respects any registered dealings on the part of the transferee, have the same effect as a transfer of the same land for valuable consideration.

SS. 38, 39.

REGISTERED
DEALINGS
WITH REGISTERED LAND.

Estate of
voluntary
transferee of
leasehold
land.

Ss. 35—38 are amended, as regards minerals, by the L. T. A., 1897: see note to s. 30, *supra*.

This section, it seems, must be read as applying to a transfer of leasehold land registered with absolute, qualified, or possessory title.

39. On the transfer of any leasehold land under this Act, unless there be an entry on the register negating such implication, there shall be implied as follows; (that is to say,)

Implied covenants on transfer of leasehold estates.

- (1.) On the part of the transferor a covenant with the transferee that, notwithstanding anything by such transferor done, omitted, or knowingly suffered, the rent, covenants, and conditions reserved and contained by and in the registered lease, and on the part of the lessee to be paid, performed, and observed, have been so paid, performed, and observed up to the date of the transfer; and
- (2.) On the part of the transferee a covenant with the transferor, that he, the transferee, his executors, administrators, or assigns, will pay, perform, and observe the rent, covenants, and conditions by and in the registered lease reserved and contained, and on the part of the lessee to be paid, performed, and observed, and will keep the transferor, his heirs, executors, and administrators, indemnified against all actions, suits, expenses, and claims on account of the nonpayment of the said rent or any

SS. 39, 40.

REGISTERED
DEALINGS
WITH REGIS-
TERED LAND.

part thereof, or the breach of the said covenants or conditions, or any of them.

The covenants implied under this section may be negatived or modified: L. T. R., 1898, r. 91, *infra*.

The covenants implied under C. A., 1881, s. 7, B, appear to be wider than those under sub-s. 1, and should be incorporated in the instrument of transfer: L. T. R., 1898, r. 148. As to covenants by a settlor, *see* C. A., 1881, s. 7, E.

As to sub-s. 2, *see* Wolst. B. & C. 7th ed. p. 34.

Freeholds
subject to a
rent.

On a transfer of freehold land subject to an existing rent (*i.e.*, a rent-charge), covenants similar to those implied by this section are to be implied: L. T. R., 1898, r. 85. The covenants may be modified or negatived: *ib.*

Transfer of Charges.

Transfer of
charges on
register.

40. The registered proprietor of any charge may, in the prescribed manner, transfer such charge to another person as proprietor. The transfer shall be completed by the registrar entering on the register the transferee as proprietor of the charge transferred; the registrar shall also, if required, deliver to the transferee a fresh certificate of charge, but the transferor shall be deemed to remain proprietor of such charge until the name of the transferee is entered on the register in respect thereof.

See as to certificate of charge, L. T. A., 1897, s. 8 (1), (3).

This section must be read in connection with the amendment contained in the First Schedule to the L. T. A., 1897, which is as follows:—

Amendment,
L. T. A.,
1897, First
Schedule.

A registered transferee for value of a charge, and his successors in title, shall not be affected by any irregularity or invalidity in the original charge itself, of which the transferee was not aware when it was transferred to him.

Effect of
amendment.

The amendment does not meet the decision in *Gibbs v. Messer*, 1891, A. C. 248, as the transferee must still see that he obtains a transfer from the registered proprietor of the charge, though whether that proprietor was registered by means of a forgery is immaterial to a transferee for value in good faith: and *see* L. T. A., 1897, s. 7.

The effect of the amendment seems to be to give the transferee of the charge who has not had notice of its irregularity a good title

to the charge; and the proprietor of the land, unless he is stamped with negligence (L. T. A., 1897, s. 7 (3)), will be entitled to indemnity to the extent of the charge, interest and costs.

For form of transfer, *see* L. T. R., 1898, r. 114, Form 44.

Settlements of registered charges will be made in the same way as settlements of stock.

Though this section only authorises a transfer by the registered proprietor to "another" person, he may transfer to himself jointly with another: *cf.* C. A., 1881, s. 50; 22 & 23 Vict. c. 35, s. 21.

As to sub-charges, *see* L. T. R., 1898, rr. 124 to 126, *infra*.

SS. 40, 41.

REGISTERED
DEALINGS
WITH REGIS-
TERED LAND.

Settlement of
registered
charges.

Whether a
transfer may
be made by
proprietor to
self and
another.

Sub-charges.

Transmission of Land and Charges.

41. On the death of the sole registered proprietor, or of the survivor of several joint registered proprietors of any freehold land, such person shall be registered as proprietor in the place of the deceased proprietor or proprietors as may, on the application of any person interested in the land, be appointed by the registrar, regard being had to the rights of the several persons interested in such land, and in particular to the selection of such person as may for the time being appear to the registrar to be entitled according to law to be so appointed, subject to an appeal to the Court in the prescribed manner by any person aggrieved by any order of the registrar under this section.

Transmission
on death of
freehold land.

See, now, s. 83 (3), as amended, as to joint proprietors.

The personal representatives of a sole or sole surviving proprietor of land or a charge dying after 1897, will be the persons entitled to be registered, except in the case of settled land (L. T. A., 1897, ss. 1, 2, 6), or where the proprietor's estate is being administered in bankruptcy: L. T. R., 1898, r. 138. They will be registered on production of the probate or letters of administration: L. T. R., 1898, r. 128, *infra*.

Personal
representa-
tives entitled
to be regis-
tered in case
of death after
1897, except
in the case of
settled land
and insol-
vency.

The personal representatives can transfer or assent to a devise without being themselves registered: L. T. A., 1897, s. 9 (6); L. T. R., 1898, rr. 130, 153.

On the death of one of several joint proprietors, the name of the deceased proprietor is to be withdrawn on production of a certificate of death or probate, or letters of administration with evidence of identity by statutory declaration, or other evidence: L. T. R., 1898, r. 136, *infra*.

Death of
one of several
joint proprie-
tors.

LAND TRANSFER ACT, 1875.

- SS. 41, 42, 43. As to settled land, *see* L. T. A., 1897, s. 6 (4), and L. T. R., 1898, rr. 131—135, *infra*.
 REGISTERED DEALINGS WITH REGISTERED LAND. As to appeals, *see* L. T. R., 1898, rr. 231 *et seq*.

Settled land.
 Appeal.

Transmission on death of leasehold land or of charge.

42. On the death of the sole registered proprietor, or of the survivor of several joint registered proprietors of any leasehold land or of any charge, the executor or administrator of such sole deceased proprietor, or of the survivor of such joint proprietors, shall be entitled to be registered as proprietor in his place.

As to entry of no survivorship of joint proprietors, *see* s. 83 (3), *infra*, as amended: L. T. R., 1898, rr. 185—187.

As to evidence of death of one of several joint proprietors, *see* L. T. R., 1898, r. 136.

Transmission on bankruptcy of land or charge.

43. Upon the bankruptcy of any registered proprietor of any land or charge, or on the liquidation of his affairs by arrangement, his trustee shall be entitled to be registered as proprietor in his place.

This section must be read with the amendment contained in the First Schedule to the L. T. A., 1897, which is as follows:—

This section shall not apply until it is certified in the prescribed manner by the Court having jurisdiction in bankruptcy that the land or charge is part of the property of the bankrupt divisible amongst his creditors. The official receiver shall be entitled to be registered pending the appointment of a trustee.

The section as so amended must be read with the L. T. R., 1898, rr. 138—145. Rule 138 in part supersedes the amendment, for it substitutes a certificate signed by the official receiver for a certificate by the Court, though the orders of Court have to be produced. On the appointment of the trustee, his certificate, where the official receiver has not been registered, is in like manner made effectual: *ib.*, r. 140.

No searches in bankruptcy.

A registered disposition in favour of a purchaser for value before registration of the official receiver or the trustee in bankruptcy would confer a good title on such purchaser as against the official receiver or the trustee in bankruptcy. Hence, no search in bankruptcy against a registered proprietor need be made by a purchaser.

See also L. T. A., 1897, s. 9 (6), which enables the official receiver or trustee in bankruptcy to transfer without being himself registered.

A company will be able to give a good title until notice of the liquidation is entered on the register (L. T. R., 1898, r. 145); on winding up the company will remain on the register, and the liquidator will affix the seal to any registered disposition.

SS. 43, 44.

REGISTERED
DEALINGS
WITH REGIS-
TERED LAND.

Limited
companies.

44. The husband of any female registered proprietor of freehold land may apply to be registered as co-proprietor with his wife, but he shall be described on the register as co-proprietor in right of his wife, and on his death in her lifetime the original registry of the wife, with a change if necessary in the name, shall revive, and confer the same rights as if her husband had never been registered as co-proprietor with her, subject nevertheless to any registered disposition which may have been made by the husband and wife in the meantime. If the husband survives the wife he shall not be entitled to be registered as sole proprietor of the land, but there shall be registered as co-proprietor with him if he is entitled as tenant by the curtesy, and as sole proprietor in place of himself and his deceased wife if he is not entitled as tenant by the curtesy, such person as may, on the application of any person interested in right of the wife, be appointed by the registrar with power for the registrar on a like application to appoint from time to time another person or other persons in the event of any person registered as co-proprietor with the husband dying in his lifetime.

Effect of
marriage of
female pro-
prietor of
freehold
land.

Any person aggrieved by any order of the registrar under this section may appeal to the Court in the prescribed manner.

This section and ss. 45 and 83 (4), *infra*, are amended by the L. T. A., 1897, First Schedule, as follows:—

These sections shall not apply to the case of any woman married on or after 1st January, 1883, or to any property to which a married woman is entitled for her separate use.

The expression “separate use” in the amendment includes, it is conceived, “separate property” under the M. W. P. A., 1882

SS. 44, 45.

REGISTERED
DEALINGS
WITH REGIS-
TERED LAND.Dispositions
by husband
and wife, *qy.*
acknowledged
deed.Married
woman
trustee.Tenant by
the curtesy.Effect of
marriage of
female pro-
prietor of
leasehold land
or charge.Production of
certificate.Effect where
section
applies.

(see *Re Bowen*, 1892, 2 Ch. 291); also, as to reversionary interests, see *Reid v. Reid*, 31 Ch. D. 402.

It is conceived that a registered disposition by husband and wife under this section has the same effect as a disposition by any other joint proprietors without any acknowledged deed, but the wife has to be examined under s. 83 (4), *infra*; and see L. T. R., 1898, rr. 273—5.

Where a married woman, whether married before or after 1883, is trustee of freehold land, she can only pass the legal estate by acknowledged deed: *Re Harkness and Allsopp's Contract*, 1896, 2 Ch. 358, 363; except where she is a bare trustee: T. A., 1893, s. 16. This decision would, it is conceived, be held not to apply to registered land, so far as regards dispositions on the register, even where an executrix is stated to be a married woman (L. T. R., 1898, r. 128), unless the marriage occurred before 1883, in which case examination takes the place of acknowledgment.

But if the woman was married before 1883 (although she may be appointed executrix after 1882), the trust property not being held for her separate use, then the amendment does not render the section inapplicable; hence, it seems the husband, in theory, ought to be registered as co-proprietor; but, in practice, it seems undesirable: see M. W. P. A., 1882, s. 24.

The powers of a tenant for life are, by the S. L. A., 1882, s. 58, conferred on a tenant by the curtesy, so that, on the death of the wife, the land should now be registered solely in the name of the tenant by the curtesy as settled land under the L. T. A., 1897, s. 6: and see note to s. 52, *infra*.

45. The husband of any female registered proprietor of leasehold land or of a charge may apply to be registered as proprietor in her place.

For amendment, see note to last section.

The rectification would not be made without production of the office-copy lease or land or charge certificate, but the registrar can compel production: L. T. A., 1897, s. 8(1); L. T. R., 1898, rr. 267—8.

As regards leaseholds and charges not excepted from the section by the amendment:

If the husband obtains registration of the lease in his name, a restriction against his creating a charge without the consent of his wife should be entered, inasmuch as a charge of unregistered chattels real does not bind the wife if she survives. If the husband dies without having disposed of the lease, his personal representatives should, it is conceived, transfer to the widow.

The mere registration of the husband in respect of a charge would, it seems, operate as a reduction into possession, so as to defeat the wife's right if she survives.

Unregistered chattels real vested in a married woman as a trustee or personal representative (the M. W. P. A., 1882, does not apply) may be assigned either (i) by her husband alone (Wms. Exors., 8th ed. pp. 969, 970) (*see Re Harkness and Allsopp's Contract*, 1896, 2 Ch. 358; Wms. Exors., 8th ed. pp. 833, 834), or (ii) by the husband and wife jointly without deed acknowledged, or (iii) by the wife by deed acknowledged, the husband merely concurring (compare 1 Dart, 6th ed. p. 10). On the death of the wife the chattels real, being held *en autre droit*, will not pass to him but to her personal representatives: Co. Lit. 351, a.

SS. 45, 46, 47.
REGISTERED
DEALINGS
WITH REGIS-
TERED LAND.
Chattels real
held in trust.

Now, if the married woman be registered as proprietor of the chattels real, it is submitted she can make a good title to them on the register without the concurrence of her husband (s. 83 (1)), who would be ill-advised to intermeddle with the trust: *see* note to last section. As to examination of a married woman, *see* ss. 83 (4) and 87, *infra*, and notes thereto.

46. Any person registered in the place of a deceased or bankrupt proprietor shall hold the land or charge in respect of which he is registered upon the trusts and for the purposes to which the same is applicable by law, and subject to any unregistered estates, rights, interests, or equities subject to which the deceased or bankrupt proprietor held the same; but, save as aforesaid, he shall in all respects, and in particular as respects any registered dealings with such land or charge, be in the same position as if he had taken such land or charge under a transfer for a valuable consideration.

Nature of
title of regis-
tered fidu-
ciary pro-
prietor.

This section must be read with sections 1, 2 and 3 of the L. T. A., 1897, altering the devolution of real estate in cases of death after 1897.

See also L. T. A., 1897, s. 9 (6), and L. T. R., 1898, rr. 128 to 145.

47. The fact of any person having become entitled to any land or charge in consequence of the death or bankruptcy of any registered proprietor, or of the marriage of any female proprietor, shall be proved in the prescribed manner.

Evidence of
transmission
of registered
proprietor-
ship.

The production of an assent to a devise by the personal repre- Assent to a
devise.

SS. 47, 48, 49.

REGISTERED
DEALINGS
WITH REGISTERED
LAND.

Repeal and re-enactment
(with amendments) of 37 &
38 Vict. c. 78,
s. 5; not to
apply to registered
lands.

sentative is made sufficient evidence of the title of the person named in the assent to be registered: L. T. A., 1897, s. 3 (4).

For prescribed manner of proof, *see* L. T. B., 1898, rr. 128—145.

48. *Section five of the Vendor and Purchaser Act, 1874, shall be repealed on and after the commencement of this Act, except as to anything duly done thereunder before the commencement of this Act; and, instead thereof, be it enacted, that upon the death of a bare trustee intestate as to any corporeal or incorporeal hereditament of which such trustee was seised in fee simple, such hereditament shall vest like a chattel real in the legal personal representative from time to time of such trustee; but the enactment by this section substituted for the aforesaid section of "The Vendor and Purchaser Act, 1874," shall not apply to lands registered under this Act.*

Devolution of
trust and
mortgage
estates on
death.

This section is, as regards deaths after 1881, repealed, and replaced by s. 30 of the C. A., 1881, which applies to registered as well as unregistered land: and *see*, now, L. T. A., 1897, Part I., *infra*.

As to the effect of the repealed section, *see* Wolst. B. & C., 7th ed. pp. 10, 11.

PART III.

UNREGISTERED DEALINGS WITH REGISTERED LAND.

Effect of
unregistered
dispositions.

49. The registered proprietor alone shall be entitled to transfer or charge registered land by a registered disposition; but, subject to the maintenance of the estate and right of such proprietor, any person, whether the registered proprietor or not of any registered land, having a sufficient estate or interest in such land, may create estates, rights, interests, and equities in the same manner as he might do if the land were not registered; and any person entitled to or interested in any unregistered estates, rights, interests, or equities in registered land may protect the same from being impaired by any act of the registered proprietor by entering on the register such notices, cautions, inhibitions, or other restrictions as are in this Act in that behalf mentioned.

The registered proprietor alone shall be entitled to transfer a registered charge by a registered disposition; but, subject to the maintenance of the right of such proprietor, unregistered interests in a registered charge may be created in the same manner and with the same incidents, so far as the difference of the subject-matter admits, in and with which unregistered estates and interests may be created in registered land.

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DEALINGS
WITH REGISTERED
LAND.

This section is thus amended by the L. T. A., 1897, First Schedule:—

This section includes power to sever the mines and minerals from the surface.

The amendment, though probably superfluous, makes it clear that, where land with the minerals thereunder has been registered, the proprietor may, by an unregistered disposition, convey the minerals separately, and remove them from the register: L. T. R., 1898, r. 177; L. T. A., 1897, s. 17. Severance of minerals from the surface.

Mines and minerals may also be severed by registered disposition: *see* s. 29, *supra*, and note thereto.

As to easements, *see* last paragraph of s. 18, *supra*, and note.

Easements.

The first statement in this section is qualified by L. T. A., 1897, s. 9 (6), which enables a person on whom the right to be registered as proprietor of land or of a charge has devolved on death or bankruptcy to transfer or charge without himself being registered: and *see* L. T. R., 1898, r. 153. Power to dispose before registration.

It is submitted that a vesting declaration on an appointment of new trustees is effectual in the case of registered land to pass the legal estate off the register, for registered land can hardly be held to be "any such share, stock, annuity or property" as is *only* transferable in manner directed by or under Act of Parliament; "property" here must mean things *sui generis* with stocks and shares; but *see* definition of "property," T. A., 1893, s. 50. Vesting declarations under the Trustee Act, 1893.

For the purposes of registered dispositions the declaration is ineffectual, though it can be given effect to on the register under L. T. R., 1898, r. 101.

The provisions of the T. A., 1893, apply to registered land and registered charges: s. 85, *infra*.

It is submitted that legal as well as equitable estates can be conveyed under this section. The words "subject to the maintenance of the estate and right of such proprietor" must be construed to extend only to the estate and right of disposition for the purposes of the register: *cf.* L. T. A., 1897, s. 6 (8). If this is not so the Legal estate, as well as equitable, can be conveyed under this section.

SS. 49, 50.

UNREGIS-
TERED
DEALINGS
WITH REGIS-
TERED LAND.

subsequent power to create "estates" as well as "equities" would have no meaning.

The effect of holding that a legal estate could not be conveyed off the register would give rise to absurd results. Thus, no legal term could be created, and the law as to persons having unregistered rights would, as regards priorities, be thrown into a state of confusion.

Moreover, seeing that an unregistered legal estate not entered on the register as an incumbrance, and not being an estate paramount to the fee conferred by registration with a possessory title, is capable of being displaced by a transfer for value, registered charge or mortgage by deposit, it is clear that it is in accordance with the principle of the Acts (*viz.*, subject to the maintenance of the powers of the proprietor not to interfere with beneficial rights) to hold that the legal estate may be passed off the register.

Mortgage by
a remainder-
man.

A mortgage by a remainderman will be made under this section. The mortgage should be protected by notice to the trustees for the purposes of the S. L. A.'s, 1882 to 1890, and by a caution which, however, would be warned off on a sale by the tenant for life. Notice to the trustees would be sufficient to prevent the remainderman, when his estate falls into possession, from obtaining registration free from the mortgage under L. T. A., 1897, s. 6 (4), so long only as the same persons continued to be trustees.

Deed poll
under Lands
Clauses Con-
solidation
Act, 1845.
Cautions.

The case of a deed poll under the Lands Clauses Consolidation Act, 1845, ss. 75, 77, is provided for by L. T. R., 1898, r. 101, *infra*.

As to cautions, inhibitions and restrictions, *see* ss. 53—59, and notes thereto. The words, "may protect the same from being impaired by any act of the registered proprietor," seem to show that cautions, &c. are only intended to operate as against the registered proprietor of the land or charge, and are not to affect, or operate as notice between, unregistered owners.

As to how far a caution affects mortgages by deposit, *see* L. T. A., 1897, s. 8, last paragraph.

Effect as to
registered
charges.

This section seems indirectly to give a power to the proprietor by registered charge or sub-charge to override unregistered interests unless protected: *see* s. 22, *supra*.

As to leases, *see* s. 50, *infra*, and note thereto. This section preserves the right of any person, "whether the registered proprietor or not," to create interests off the register.

Notice of Leases.

Lessee may
apply for
registration
of notice of
lease.

50. Any lessee or other person entitled to or interested in a lease or agreement for a lease of registered land made *subsequently to the last transfer of the land on the register,*

where the term granted is for a life or lives, or is determinable on a life or lives, or exceeds twenty-one years, or where the occupation is not in accordance with such lease or agreement, may apply to the registrar to register notice of such lease or agreement in the prescribed manner, and when so registered every registered proprietor of the land, and every person deriving title through him, excepting proprietors of incumbrances registered prior to the registration of such notice, shall be deemed to be affected with notice of such lease or agreement as being an incumbrance on the land in respect of which the notice is entered.

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DEALINGS
WITH REGIS-
TERED LAND.

The words in italics are repealed: L. T. A., 1897, First Schedule.

As to notice of registration of a lease, *see* L. T. R., 1898, rr. 53, 54.

As to what leases are deemed not to be incumbrances, *see* s. 18 (7), *supra*.

As to vacating notice of a lease, *see* L. T. R., 1898, rr. 181—183, *infra*.

The Acts give no power to the registered proprietor as such to grant a lease by registered disposition or otherwise. A lease, therefore, has to be granted off the register (s. 49), and notice thereof entered under this section.

An intending lessee is entitled to a legal term, and in cases where he investigates the title of his lessor (*e.g.*, where a fine is taken) he will require, in the case of an absolute title, an abstract of title since the last registered transfer for value (s. 30), and in the case of a possessory title, in addition to that required in the case of an absolute title, an abstract of title to estates, rights and interests, paramount to the fee simple conferred by first registration: ss. 8, 32.

A lessee must not, however, rely on the last registered transferee for value having a power to lease, for he may be a trustee without power to lease, or to grant the lease in question: *see* note “(f), Legal Estate,” to s. 7, *supra*; and *see* Lewin’s Trusts, 9th ed., p. 670.

A term to secure portions would seem to be a lease where the occupation is not in accordance with the lease, and may be protected by notice under this section: and *see* L. T. A., 1897, s. 6 (7).

As to the prescribed manner for registration of notice of a lease, *see* L. T. R., 1898, rr. 166—169, *infra*. The certificate should, if possible, be produced, though not necessary: L. T. A., 1897, s. 8 (1).

It is submitted that the exception of prior registered incumbrances from the effect of registration of the notice of a lease is now too wide, for the incumbrancer ought to be bound by the

Vacation of
notice of
lease.

Leases.
No power to
lease con-
ferred by the
Acts.

Lessee
entitled to a
legal term.
When
abstracts of
title required.

Portion
terms.

Registration
of notices of
leases as in-
cumbrances.

“Excepting
proprietors
of incum-
brances regis-

S. 50, 51.
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 DEALINGS
 WITH REGISTERED LAND.
 ———
 tered prior to
 registration
 of such
 notice."

notice if he would have been bound by the lease under the general law.

Thus, suppose A. is the registered proprietor of freehold land held for his own benefit, subject to a registered charge in favour of B. Then A., being in possession, grants a building lease to C. by virtue of C. A., 1881, s. 18, in respect of which C. registers a notice. Notwithstanding this notice, B.'s title is paramount to C.'s lease, and a purchaser taking under B.'s power of sale would be able to oust C. To prevent this C., in addition to registering notice of the lease, would be bound to lodge a caution (notwithstanding s. 53, *infra*) against B., unless B.'s charge contains a stipulation to the effect that—

Suggested
 stipulation to
 be used in all
 registered
 charges.

This charge shall be subject to all such leases of the land, notice whereof is registered under ss. 50 and 51 of the Land Transfer Act, 1875 (whether made by the registered proprietor of the land or other person entitled to grant the same), as would have been binding on the creditor if the land were unregistered and this charge had been effected by mortgage; and, in like manner, as if notice of such leases had been registered before the registration of this charge.

Mortgagors'
 and mort-
 gagees'
 power to lease
 while in pos-
 session.

The absence of some such stipulation would have the effect of an agreement (C. A., 1881, s. 18 (13)) restricting the mortgagor's statutory power to lease, except with regard to occupation leases within s. 18 (7), *supra*.

The inconvenience that will result from the necessity of obtaining the consent of registered chargees to all leases not within s. 18, *supra*, will hardly be questioned. Moreover, where the lessee is to expend money on the land, he will not (particularly having regard to s. 53, *infra*) be satisfied with the protection afforded by a caution against the chargee, but will require an entry to be made in the Charges Register and on the charge certificate.

It is hoped, however, as is possible, that it will be held that the provisions of this section are amended by the C. A., 1881, s. 18.

Chargee's
 power to
 lease when
 in possession.

Assuming that a chargee in possession has power to lease, a lease by him would only be good to the extent to which the proprietor of the land, with the consent of incumbrancers, might have granted it (C. A., 1881, s. 18 (15)). Now the proprietor may have been a trustee without a power to lease, and it seems right that if his beneficiaries have allowed him to be placed on the register and to create a registered charge, the Acts ought in this case expressly to have conferred a power to lease on the chargee when in possession, so as to bind the beneficiaries: *see* also note to s. 25, *supra*.

Manner of
 registering
 notices of
 leases.

51. In order to register notice of a lease or agreement for a lease, if the registered proprietor of the land does not

concur in such registry, the applicant shall obtain an order of the Court, authorising the registration of notice of such lease or agreement and shall deliver such order to the registrar, accompanied with the original lease or agreement or a copy thereof, and thereupon the registrar shall make a note in the register identifying the lease or agreement or copy so deposited, and the lease or agreement or copy so deposited shall be deemed to be the instrument of which notice is given; but if the registered proprietor concurs in such registry, notice may be entered in such manner as may be agreed upon.

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 —
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 TERED
 DEALINGS
 WITH REGIS-
 TERED LAND.
 —

See L. T. R., 1898, rr. 166—169.

It is apprehended that a copy, and not the original lease, will usually be deposited, unless the leasehold interest is also registered.

A copy
 and not
 the original
 lease should
 be deposited.

The application may be by summons or motion: L. T. R., 1898, r. 236.

Whether the term is derived immediately out of the registered freehold or leasehold (*ib.*, r. 166) reversion, the registered proprietor of the reversion must either concur in the application to enter notice of the lease, or the lessee must obtain an order of Court. Unless, therefore, the lessee stipulates for the concurrence of the registered proprietor (who need not necessarily be the lessor), unnecessary delay and expense will be incurred.

Application,
 how made.
 Concurrence
 of registered
 proprietor of
 reversion
 required, or in
 default an
 Order of
 Court.

Thus, suppose a registered chargee goes into possession (s. 25, *supra*), and grants a building lease under C. A., 1881, s. 18, why should the lessee have to obtain the consent of the registered proprietor of the land (who probably cannot be found), or else procure an order before he can register notice of his lease? Or suppose that the registered proprietor of the reversion is a trustee, and that the power to lease is vested in a beneficiary, why should the lessee of that beneficiary be concerned with obtaining in effect an acknowledgment of his title from the trustee?

It is conceived that if the registered proprietor of the reversion refused to concur in the application without sufficient reason, the Court would order him to pay the costs.

Where, however, the lease itself is to be registered under s. 11, *supra*, then it seems that the consent of the registered proprietor of the reversion is not necessary before registration of notice against his title (L. T. R., 1898, r. 53); mere notice to him is sufficient if he does not take proceedings within twenty-eight days (*ib.*); and, as to service of notice, *see ib.*, rr. 256—9. Whether the service is to be personal or through the post, *query*.

Distinction
 where lease is
 to be regis-
 tered.

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Registration
of notices of
estates in
dower or by
the curtesy.

Notice of Estates in Dower or by the Curtesy.

52. Any person entitled to an estate in dower or by the curtesy in any registered land may apply in the prescribed manner to the registrar to register notice of such estate; and the registrar, if satisfied of the title of such person to such estate, shall register notice of the same accordingly in the prescribed form; and when so registered, such estate shall be an incumbrance appearing on the register, and shall be dealt with accordingly.

Notice of
right to
dower.

No powers are conferred by the S. L. A., 1882, on a doweress; and the right must be protected by notice under this section, and L. T. R., 1898, r. 170, and Form 49.

It is conceived that the right to dower must be in possession, except where the right has attached in favour of a woman married before 1834: Dower Act, 1833.

Widow's
preferential
charge for
500l.

The widow's charge for 500l., under the Intestates' Estates Act, 1890, is paramount to her right to dower; the 500l. is to be taken proportionately from the real and personal estate. After the 500l. is deducted there is a residue, out of which she is entitled to dower as if the 500l. had not been part of the estate: *Re Charriere*, 1896, 1 Ch. 912.

The 500l. may be raised by sale or mortgage, and it is conceived that the personal representative might, with the consent of the widow, give her a registered charge for that amount, with interest at 4 per cent.

Notice of the right to dower is to be entered in the Charges Register: L. T. R., 1898, r. 170.

Estate by the
curtesy
should not be
registered as
an incum-
brance.

Rule 170 also prescribes the mode for registration of notice of an estate by the curtesy as an incumbrance, but it is submitted that the rule ought to have been confined to the case of dower: L. Q. R., 1886, p. 334.

For the above section, as regards an estate by the curtesy, is now superseded by L. T. A., 1897, s. 6 (1) (10), under which a person having the powers of a tenant for life (*see* L. T. R., 1898, First Schedule, Forms 16 *et seq.*) may apply for registration of the land in his name. A tenant by the curtesy who is in possession or in receipt of the rents and profits is a person who has those powers: S. L. A., 1882, s. 58 (viii); *Bates v. Kesterton*, 1896, 1 Ch. 159, 164.

Though L. T. A., 1897, s. 6 (1), gives an option to a tenant by the curtesy either to have himself, or trustees with a power of sale (these would not include trustees for the purposes of the S. L. A., except during a minority), or persons having an over-riding power

of appointment, registered as proprietors of the land, the two subsequent alternatives cannot well exist (*see* S. L. A., 1884, s. 8) where a husband succeeds to "settled land" as tenant by the curtesy; hence there is no option, and the tenant by the curtesy must be registered: compare, however, *Hatten v. Russell*, 38 Ch. D. 334.

Again, having regard to S. L. A., 1882, ss. 50, 51, 53, which restrict the right to fetter the powers conferred on a tenant for life and constitute him a trustee in respect of the exercise of those powers, it is submitted that it would be improper for a tenant by the curtesy to permit any other person to be registered as proprietor of the land. Though, under ss. 5, 11, *supra*, a nominee may be registered, these sections do not enable a trustee to delegate his trust: and *see* s. 68, *infra*.

The contingent right of a husband to take by the curtesy, in case he survives his wife, is not an estate by the curtesy (compare, *Bates v. Kesterton*, *ubi supra*); hence, is not within this section or L. T. R., 1898, r. 170: and *see* s. 44, *supra*.

SS. 52, 53.

UNREGIS-
TERED
DEALINGS
WITH REGIS-
TERED LAND.

Cautions against registered Dealings.

53. Any person interested under any unregistered instrument, or interested as a judgment creditor, or otherwise howsoever, in any land or charge registered in the name of any other person, may lodge a caution with the registrar to the effect that no dealing with such land or charge be had on the part of the registered proprietor until notice has been served upon the cautioner.

Cautions
against regis-
tered deal-
ings, how to
be lodged.

The caution shall be supported by an affidavit or declaration made by the cautioner or his agent in the prescribed form, and containing the prescribed particulars.

Provided, that a person interested under a lease or agreement for a lease of which notice has been entered on the register, or entitled to an estate in dower, or estate by the curtesy, of which notice has been entered on the register, shall not be entitled to a caution in respect of such lease or estate in dower or by the curtesy.

For form of caution, *see* L. T. R., 1898, First Schedule, Form 53; and for form of declaration, *see* *ib.*, Form 12.

See, generally, as to cautions, L. T. R., 1898, rr. 188, 193.

Cautions
against
registered
dealings.

S. 53.

UNREGIS-
TERED
DEALINGS
WITH REGIS-
TERED LAND.

Doubtful
effect of
caution.

A caution is analogous to a *distringas* on stock. When once used, it is exhausted, and must be renewed if so required: L. T. R., 1898, r. 191.

Cautions will be entered in the Proprietorship Register: L. T. R., 1898, r. 6.

According to the above section, and the L. T. R., 1898, First Schedule, Form 53, a caution is to be "to the effect that no *dealing*" with land or a charge is to take place until notice has been served on the cautioner.

This, in terms, is wide enough to cover not only registered dealings and mortgages by deposit of the certificate, but also all unregistered dispositions, though this cannot have been intended.

On the other hand, by s. 54, the effect of a caution seems to be confined so as merely to prohibit the registrar from *registering* a dealing until the notice is served: and see s. 64, *infra*, which provides that a caution is to have no effect whatever except as in the Act mentioned; but *query* whether s. 64 is not confined to cautions under s. 60.

This narrow construction gives effect to the head-note of s. 53, and is in accordance with the policy of the L. T. A., 1875, which was only to show by means of a register the person capable of selling or charging registered land. However, that Act must now be read with L. T. A., 1897, and the best sense is made of the two Acts by holding that cautions, inhibitions and restrictions do affect mortgages by deposit to some extent (L. T. A., 1897, s. 8, last paragraph, note), though, as the registrar may never know of the deposit of the certificate, it cannot be intended that he should give notice of the deposit to the cautioner any more than he would give notice of a dealing under s. 49, *supra*.

Cautions does
not give
notice of
right pro-
tected.

There appears to be nothing in the Acts to make the lodgment of a caution equivalent to giving notice of the right protected to the registered proprietor of the land or charge (compare *Cator v. Cooley*, 1 Cox, 182); but, as to how far a caution is notice, see note to L. T. A., 1897, s. 8, last paragraph.

Lis pendens.

The lodgment of a caution will, as regards registered dispositions, take the place of a *lis pendens*: L. T. R., 1898, First Schedule, Form 12.

Effect of
caution as
regards un-
registered
dispositions.

Purchasers who do not obtain the custody of the certificate, but acquire interests under unregistered dispositions (L. T. A., 1875, s. 49), would also do well to search for cautions. For, though they must satisfy themselves off the register that the person they are dealing with, who may or may not be the registered proprietor, has power to grant the interest, yet the search might lead to the disclosure of forgotten rights.

Cautions may
remain in
force where
an unregis-
tered right is
dealt with.

Though the purchaser of an unregistered interest is dealing with the registered proprietor, it will not be necessary to have the

caution removed, but the purchaser must be satisfied that the cautioner's right or interest is bound or released. SS. 53, 54, 55.

The last paragraph of this section ought not to prevent a lessee from lodging a caution against a chargee (*see* s. 50, *supra*) where the notice of the lease is ineffectual. However, to hold that a caution is more effectual than the notice is so absurd that it may result in the Courts deciding that the notice is good.

As to settled land, *see* L. T. R., 1898, r. 70; and s. 56, *infra*.

UNREGIS-
TERED
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WITH REGIS-
TERED LAND.

54. After any such caution has been lodged in respect of any land or charge, the registrar shall not, without the consent of the cautioner, register any dealing with such land or charge until he has served notice on the cautioner, warning him that his caution will cease to have any effect after the expiration of the prescribed number of days next ensuing the date at which such notice is served; and after the expiration of such time as aforesaid the caution shall cease unless an order to the contrary is made by the registrar, and upon the caution so ceasing the land or charge shall be dealt with in the same manner as if no caution had been lodged.

Cautioner entitled to notice of proposed registered dealings.

The cautioner should give two addresses for service: L. T. R., 1898, r. 260.

The prescribed number of days is fourteen, or such other period (not being less than seven days) as the registrar may, under special circumstances, direct: L. T. R., 1898, r. 190.

Prescribed number of days.

As to an order to the contrary by the registrar, *see* s. 55, *infra*.

The registration of the notice of a mortgage by deposit is not a dealing with the land or charge within this section, but is equivalent to the lodgment of a caution (L. T. R., 1898, r. 200; and *see* L. T. A., 1897, s. 8, last paragraph, and ss. 9 (6), 12); nor, of course, can the registrar give notice to a cautioner of an intended mortgage by deposit, for the deposit will probably be made before the registrar knows of it.

Order to the contrary.

Notice of mortgage by deposit.

As to the consent of a cautioner to a registered disposition, *see* L. T. R., 1898, rr. 155, 190.

Consent of cautioner to registered disposition.

As to withdrawal of cautions, *see* *ib.*, r. 192, and Form 56.

Withdrawal of cautions.

55. If before the expiration of the said period the cautioner, or some other person on his behalf, appears before the registrar, and gives sufficient security to indemnify

Registered dealings delayed on bond being given.

SS. 55, 56, 57.

UNREGIS-
TERED
DEALINGS
WITH REGIS-
TERED LAND.

every party against any damage that may be sustained by reason of any dealing with the land or charge being delayed, the registrar may thereupon, if he thinks fit so to do, delay registering any dealing with the land or charge for such further period as he thinks just.

The registrar will, it is conceived, in a proper case, enter an inhibition on the cautioner's application under s. 57, *infra*, without necessarily taking security under this section; and the cautioner may appeal against the refusal of the registrar to do so: s. 57, *infra*; L. T. R., 1898, rr. 232, 233.

Time under
caution will,
if necessary,
be extended
till inhibition
can be
obtained.

It is conceived that it will be the usual practice for a cautioner to apply to the registrar for an inhibition, as the registrar may extend the time under a caution: L. T. R., 1898, rr. 190, 276.

A cautioner might find some difficulty in raising sufficient security on short notice.

Compensation
for improper
lodging of
caution.

56. If any person lodges a caution with the registrar without reasonable cause, he shall be liable to make to any person who may have sustained damage by the lodging of such caution such compensation as may be just, and such compensation shall be recoverable as a debt by the person who has sustained damage from the person who lodged the caution.

Any person aggrieved by any act done by the registrar in relation to cautions under this Act, may appeal to the Court in the prescribed manner.

Indemnity.

The right to indemnity may be lost if a person neglects to lodge a caution where he ought to do so: L. T. A., 1897, s. 7 (3), *infra*, and note thereto.

Unless a caution improperly lodged is withdrawn before damage is incurred, the right to compensation will not be prejudiced by the withdrawal: L. T. R., 1898, r. 192.

Appeals.

The application to the Court will be by summons: L. T. R., 1898, r. 236. As to appeals generally, *ib.*, rr. 231—3.

Inhibition against registered Dealings without Order of Court.

Power of
Court or
registrar to
inhibit
registered
dealings.

57. The Court, or, subject to an appeal to the Court, the registrar, upon the application of any person interested, made in the prescribed manner, in relation to any regis-

tered land or charge, may, after directing such inquiries (if any) to be made and notices to be given and hearing such persons as the Court or registrar thinks expedient, issue an order or make an entry inhibiting for a time, or until the occurrence of an event to be named in such order or entry, or generally until further order or entry, any dealing with any registered land or registered charge.

SS. 67, 68.

UNREGIS-
TERED
DEALINGS
WITH REGIS-
TERED LAND.

The Court or registrar may make or refuse to make any such order or entry, and annex thereto any terms or conditions the Court or registrar may think fit, and discharge such order or cancel such entry when granted, with or without costs, and generally act in the premises in such manner as the justice of the case requires.

Any person aggrieved by any act done by the registrar in pursuance of this section may appeal to the Court in the prescribed manner.

As to applications for inhibitions, *see* L. T. R., 1898, rr. 194, 195. They will be entered in the Proprietorship register: *ib.*, r. 6.

An inhibition, while in force, is a complete protection to the inhibitor against any registered disposition by the registered proprietor. Inhibitions.

As to the effect of an inhibition on mortgages by deposit, *see* L. T. A., 1897, s. 8, last paragraph, and note thereto. For a special inhibition where an incumbent of a benefice is registered, *see* L. T. A., 1897, s. 15 (1) (ii); L. T. R., 1898, r. 197, Form 59. Effect of
inhibitions
as regards
mortgage by
deposit.

It is conceived that it will be the practice for a cautioner who has received notice to apply for an inhibition in the first instance to the registrar: *see* note to last section. Incumbents
of benefices.
Cautioner
may apply for
inhibition.

An inhibition is also used in the case of settled land for the protection of the persons beneficially interested: L. T. A., 1897, s. 6 (2); and L. T. R., 1898, First Schedule, Forms 6—10, *infra*. Inhibitions
in the case of
settled land.

For the principles on which inhibitions are to be framed in the case of settled land, *see* L. T. R., 1898, r. 70.

Power of Registered Proprietor to impose Restrictions.

58. Where the registered proprietor of any land is desirous for his own sake, or at the request of some person beneficially interested in such land, to place restrictions on transferring or charging such land, such proprietor may apply to the registrar to make an entry in the register Power to
place restric-
tions on
register.

- SS. 58, 59. that no transfer shall be made of or charge created on such land, unless the following things, or such of them as the proprietor may determine, are done; (that is to say,) UNREGIS-
TERED
DEALINGS
WITH REGIS-
TERED LAND.
- Unless notice of any application for a transfer or for the creation of a charge is transmitted by post to such address as he may specify to the registrar:
- Unless the consent of some person or persons, to be named by such proprietor, is given to the transfer or the creation of a charge:
- Unless some such other matter or thing is done as may be required by the applicant and approved by the registrar.

See also L. T. R., 1898, r. 196, as to applications for entering restriction; and Form 57.

Amendment. The words in italics are repealed by the L. T. A., 1897, First Schedule, and the section is made to apply to charges as well as to land.

Restrictions. A restriction will be entered in the proprietorship register (L. T. R., 1898, r. 6), and is a bar to any registered disposition not in accordance with the terms of the restriction.

Mortgages by deposit. As to the effect of restrictions with regard to mortgages by deposit, see L. T. A., 1897, s. 8, last paragraph, note. The main question is whether a restriction against "charging" applies only to registered charges, or whether a mortgagee by deposit would be bound to see that the restriction was complied with.

Restrictions and inhibitions are the machinery for the protection of the rights of persons beneficially interested in settled land: see L. T. A., 1897, s. 6 (2). For the principles on which they are to be framed, and for Forms, see L. T. R., 1898, r. 70; and First Schedule, Forms 6 to 10, *infra*.

A restriction must be distinguished from an inhibition: see s. 57, *supra*.

Registrar to enter restrictions in register. 59. The registrar shall thereupon, if satisfied of the right of the applicant to give such directions, make a note of such directions on the register, and no transfer shall be made or charge created except in conformity with such directions; but it shall not be the duty of the registrar to enter any of the above directions, except upon such terms as to payment of fees and otherwise as may be prescribed, or to enter any restriction that the registrar may deem

unreasonable, or calculated to cause inconvenience; and any such directions may at any time be withdrawn or modified at the instance of all the persons for the time being appearing by the registry to be interested in such directions, and shall also be subject to be set aside by the order of the Court.

SS. 59, 60, 61.

UNREGIS-
TERED
DEALINGS
WITH REGIS-
TERED LAND.

For prescribed fees, *see* L. T. A., 1897, Second Schedule; and Fee Order, Chap. V., *infra*.

"By the registry": this seems to be a misprint for register.

As to withdrawal of restrictions, *see* L. T. R., 1898, r. 196, Form 58.

PART IV.

PROVISIONS SUPPLEMENTAL TO FOREGOING PARTS OF ACT.

Caution against Entry of Land on Register.

60. Any person having or claiming such an interest in any land which is not already registered as entitles him to object to any disposition thereof being made without his consent, may lodge a caution with the registrar to the effect that the cautioner is entitled to notice in the prescribed form, and to be served in the prescribed manner, of any application that may be made for the registration of such land.

Caution
against regis-
tration of
land.

As to cautions under this section, *see* L. T. R., 1898, rr. 74—77.

As to inquiry for a caution under this section on first registration, *see* note to s. 5, *supra*.

As to a mortgagee of unregistered land taking a covenant from mortgagor not to register and lodging a caution, *see* s. 8, *supra*, and note thereto.

This form of caution is now extended to cover the cases of registration with a qualified or absolute title where a possessory or qualified title is already registered: L. T. R., 1898, r. 188, Form 54.

Caution
against regis-
tration with
absolute title.

61. The caution shall be supported by an affidavit or declaration in the prescribed form, stating the nature of the interest of the cautioner, the land to be affected by

Caution to be
supported by
affidavit.

SS. 61, 62, 63,
64.

PROVISIONS
SUPPLE-
MENTAL TO
FOREGOING
PARTS OF ACT.

Cautioner
entitled to
notice of
proposed
registration
of land.

such caution, and such other matters as may be pre-
scribed.

For prescribed form, *see* L. T. R., 1898, r. 76; and First Sche-
dule, Form 12.

62. After a caution has been lodged in respect of any land, which has not already been registered, registration shall not be made of such land until notice has been served on the cautioner to appear and oppose, if he thinks fit, such registration, and the prescribed time has elapsed since the date of the service of such notice, or the cautioner has entered an appearance, which may first happen.

The prescribed time is fourteen days, or such other period (not being less than seven days) as the registrar may, under special circumstances, direct: L. T. R., 1898, r. 77.

For form of notice, *see* *ib.*, and First Schedule, Form 13.

Compensation
for improper
lodging of
caution.

63. If any person lodges a caution with the registrar without reasonable cause, he shall be liable to make to any person who may have sustained damage by the lodging of such caution such compensation as may be just, and such compensation shall be deemed to be a debt due to the person who has sustained damage from the person who has lodged the caution.

This section corresponds with s. 56, *supra*: and *see* note to next section.

Saving as to
effect of
caution.

64. A caution lodged in pursuance of this Act shall not prejudice the claim or title of any person, and shall have no effect whatever except as in this Act mentioned.

Whether
section
applies to
both kinds of
cautions.

This section in terms applies to any caution, but it may, perhaps, be doubted whether it is not confined to a caution under s. 60 (*see* headnotes to ss. 53 and 60, which are an integral part of the Act, and do not stand in the same position as marginal notes): *see* also ss. 56 and 63, which are nearly identical.

If this section applies to cautions under s. 53, then it seems clear that a caution does not operate as notice of the right protected; but as to how far attention must be paid to cautions by mortgagees by deposit, *see* L. T. A., 1897, s. 8, last paragraph, and note.

Crown Lands.

SS. 65, 66.

PROVISIONS
SUPPLE-
MENTAL TO
FOREGOING
PARTS OF ACT.Facilities for
registration of
Crown lands.

65. With respect to land or any estate, right, or interest in land vested in Her Majesty, *her heirs or successors*, either in right of the Crown or of the Duchy of Lancaster, or otherwise, or vested in any public officer or body in trust for the public service, the public officer or body having the management thereof (if any), or, if none, then such person as Her Majesty *her heirs or successors*, may by writing under her *or their* sign manual appoint, may represent the owner of such land, estate, right or interest for all the purposes of this Act, and shall be entitled to such notices, and may make and enter any such application or cautions, and do all such other acts, as any owner of land, or of any estate, right, or interest therein (as the case may be) is entitled to receive, make, enter, or do under this Act; and with respect to land or any estate, right, or interest in land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall for the time being, or as the personage for the time being entitled to the revenues and possessions of the Duchy of Cornwall, may in writing appoint, may act as and represent the owner of such land, estate, right, or interest for all the purposes of this Act, and shall be entitled to receive such notices, and may make and enter any such application or cautions, and do all such other acts as any owner of land or of any estate, right, or interest in land (as the case may be) is entitled to make, enter, or do under this Act.

The words in italics are repealed: Statute Law Revision (No. 2) Act, 1893.

66: If it appears to the registrar that any land, application for registration whereof is made to him, comprises land below high-water mark at ordinary spring tides, he shall not register the land unless and until he is satisfied that at least one month's notice in writing of the application has been given to the Board of Trade; and in case of land in the county palatine of Lancaster, also to the proper officer of the Duchy of Lancaster; and in case of

Registry of
land below
high-water
mark.

SS. 66, 67, 68.

PROVISIONS
SUPPLE-
MENTAL TO
FOREGOING
PARTS OF ACT.

Amendment.

land in the counties of Cornwall or Devon, also to the proper officer of the Duke of Cornwall; and in all other cases also to the Commissioners of *Her Majesty's Woods, Forests, and Land Revenues*.

This section does not apply to registration with a possessory title: L. T. A., 1897, First Schedule.

The words in italics are repealed: Statute Law Revision (No. 2) Act, 1893.

See, as to the preparation and service of the notices required by this section, L. T. R., 1898, r. 28.

As to Proceedings on and before Registration.

Registration
of lands of
different
tenures.

67. If it appears to the registrar that any land, application for registration whereof is made to him, comprises land of freehold tenure and also land of a tenure other than freehold intermixed and undistinguishable, he may, notwithstanding anything in this Act, register the land, but he shall enter notice on the register in such manner as he thinks fit of the facts relating to the tenure of the land, and the tenure of the portion of the land other than freehold shall remain unaffected by the registration.

See L. T. R., 1898, r. 73, *infra*; and s. 2, *supra*, and note thereto.

This section does not seem to apply unless the fact that there is land of another tenure besides freehold is discovered on first registration, or, at any rate, before there is a transfer for value on the register.

Compulsory
provisions do
not apply to
freeholds
mixed with
and undis-
tinguishable
from lands of
other tenure.

The compulsory provisions of the Acts do not apply where freeholds are intermixed and undistinguishable from lands of other tenure: L. T. A., 1897, s. 24.

Long leaseholds would be lands of a tenure other than freehold within the meaning of this section.

Long lease-
holds.

Trustees
may sell by
medium of
registry.

68. Any person holding land on trust for sale, and any trustee, mortgagee, or other person having a power of selling land, may authorise the purchaser to make an application to be registered as first proprietor with any title which a proprietor is authorised to be registered with under this Act, and may consent to the performance of

the contract being conditional on his being so registered, or may himself apply to be registered as such proprietor with the consent of the persons (if any) whose consent is required to the exercise by the applicant of his trust or power of sale; and the amount of all costs, charges, and expenses properly incurred by such person in or about such application shall in all cases be ascertained and declared by the registrar, and shall be deemed to be costs, charges, and expenses properly incurred by such person in the execution of his trust or in pursuance of his power; and such person may retain or reimburse the same to himself out of any money coming to him under the trust or power, and he shall not be liable to any account in equity in respect thereof.

SS. 68, 69.
—
PROVISIONS
SUPPLE-
MENTAL TO
FOREGOING
PARTS OF ACT.
—

This section has an important bearing on the question of settled land: see L. T. A., 1897, s. 6, *infra*, and notes thereto.

A mortgagee cannot, it is conceived, apply to be registered unless and until his power of sale is exerciseable.

A trustee who has only a future trust for or power of sale cannot apply under this section (compare *Re Horne's S. E.*, 39 Ch. D. 84); and where there are trustees within S. L. A., 1890, s. 16, and the "settled land" consists of leaseholds, it is submitted that the tenant for life is the only person who should be registered: see notes to L. T. R., 1898, rr. 71, 81.

Mortgagee cannot register unless his power of sale is exerciseable. Future trust or power of sale.

Where there is a disposition on trust for sale, the trustees should be registered under this section, unless the tenant for life of the proceeds of sale has obtained an order under S. L. A., 1884, s. 7, under which he is to exercise the statutory power of sale. Orders granted under that section, however, rarely, if ever, extend to the exercise of the power of sale.

Trustees within S. L. A., 1882, s. 63.

There is no power to register a nominee of a trustee or mortgagee: compare s. 5, *supra*.

This section, by enabling trustees for sale or mortgagees to apply for registration, explains the meaning of s. 7 (3), *supra*. But trustees or mortgagees may apply for registration under this section, unless there is a contract for sale, *query*.

69. Any two or more persons entitled for their own benefit, concurrently or successively, or partly in one mode and partly in another, to such estates, rights, or interests in land as together make up such an estate as would, if vested in one person, entitle him to be registered as pro-

Registration of part owners.

SS. 69, 70.
 PROVISIONS
 SUPPLE-
 MENTAL TO
 FOREGOING
 PARTS OF ACT.

prietor of the land, may (subject as in this Act mentioned with respect to the number of persons to be registered in respect of the same land), apply to the registrar to be registered as joint proprietors, in the same manner and with the same incidents, so far as circumstances admit, in and with which it is in this Act declared that any individual proprietor may be registered.

Undivided
 shares.

Undivided shares can now be registered, and there is no restriction as to the number of persons: L. T. A., 1897, s. 14 (1), amending s. 83, *infra*; and *see* s. 24 (1). Registration of an undivided share is not made compulsory in a compulsory district: L. T. A., 1897, s. 23 (1).

Tenant for
 life and
 remainder-
 man in fee.

A tenant for life and remainderman in fee simple seem to be entitled to be registered as joint proprietors under this section if they think fit, but, unless there are no family charges or powers of charging subsisting, it will be advisable for the tenant for life only to be registered: *see* S. L. A., 1882, s. 20.

The words between brackets in this section are in effect repealed: L. T. A., 1897, s. 14 (1).

Instruments
 and facts
 affecting the
 title to be
 disclosed on
 registrations.

70. Before the completion of the registration of any land in respect of which an examination of title is required, the vendor and his solicitor, in cases where the applicant is a person who has contracted to buy such land, and in all other cases the applicant for registration and his solicitor, shall each, if required by the registrar, make an affidavit or declaration that to the best of his knowledge and belief all deeds, wills, and instruments of title, and all charges and incumbrances affecting the title to the land which is the subject of the application, and all facts material to such title, have been disclosed in the course of the investigation of title made by the registrar. The registrar may require any person making an affidavit or declaration in pursuance of this section to state in his affidavit or declaration what means he has had of becoming acquainted with the several matters referred to in this section; and if the registrar is of opinion that any further or other evidence is necessary or desirable, he may refuse to complete the registration until such further or other evidence is produced.

See L. T. R., 1898, r. 38.

This section does not seem to have any application in the case of a possessory title.

The evidence to show that the requirements of this section have been complied with is a statutory declaration: L. T. R., 1898, r. 41. For form thereof, *see ib.*, First Schedule, Form 5. Declarations (L. T. R., 1898, r. 1 (5)) made for the purposes of the registry are not chargeable with duty (L. T. R., 1898, r. 261); as to who may take same, *see ib.*

The making of a false declaration is a misdemeanour: s. 101, *infra*.

Defects in title which, as between vendor and purchaser, might have been covered by conditions of sale must be disclosed to the registrar by the vendor, if the purchaser has not taken a conveyance (*see s. 5*) on an application to register with an absolute title; but if the purchaser has taken a conveyance, his declaration will extend to matters only within his knowledge; the conditions of sale will, however, be produced: L. T. R., 1898, r. 29.

The section does not enable the applicant or the vendor to set up the rule in *Re Ford and Hill*, 10 Ch. D. 365; though the rule remains good as between vendor and purchaser.

SS. 70, 71.

PROVISIONS
SUPPLEMENTAL TO
FOREGOING
PARTS OF ACT.

Evidence that material facts have been disclosed on investigation of title.

Statutory declarations and affidavits. Effect of section as regards defects of title and *Re Ford and Hill*.

71. When an application has been made to the registrar for the registration of any land, if any person has in his possession or custody any deeds, instruments, or evidences of title relating to or affecting such land, to the production of which the applicant, or any trustee for him is entitled, the registrar may require such person to show cause, within a time limited, why he should not produce such deeds, instruments, or evidences of title to the registrar, or otherwise, as the registrar may deem fit; and, unless cause is shown to the satisfaction of the registrar within the time limited, such deeds, instruments, and evidences of title may be ordered by the registrar to be produced at the expense of the applicant, at such time and place, and in such manner, and on such terms as the registrar thinks fit.

Production of deeds.

Any person aggrieved by any order of the registrar under this section may appeal in the prescribed manner to the Court, which may annul or confirm the order of the registrar with or without modification.

If any person disobeys any order of the registrar made in pursuance of this section, the registrar may certify such

SS. 71, 72.
 PROVISIONS
 SUPPLE-
 MENTAL TO
 FOREGOING
 PARTS OF ACT.

disobedience to the Court, and thereupon such person, subject to such right of appeal as aforesaid, may be punished by the Court in the same manner in all respects as if the order made by the registrar were the order of the Court.

Registrar
 may compel a
 mortgagee to
 produce title
 deeds.

A mortgagor now has the right to inspect the deeds in his mortgagee's possession: C. A., 1881, s. 16. It is conceived, therefore, that the registrar could compel their production under this section, and could endorse notice of the registration thereon under s. 72, *infra*; but the rights of the mortgagee must, in the case of absolute and qualified title, be protected by entries on the register.

Appeals.

An appeal under this section will be made by summons: L. T. R., 1898, r. 236.

Query,
 whether
 registrar has
 any better
 right than
 applicant to
 require pro-
 duction.

Unless there is an acknowledgment or covenant for production or equitable right to production which may be enforced by the applicant, it seems that the registrar has no power to make the order under this section.

See also as to production of maps and other documents, ss. 109, 110, *infra*; and L. T. R., 1898, rr. 267, 268.

Deeds to be
 marked with
 notice of
 registration.

72. A person shall not be registered as proprietor of land until, if required by the registrar, he has produced to him such documents of title as will in the opinion of the registrar, when stamped or otherwise marked, give notice to any purchaser or other person dealing with such land of the fact of the registration, and the registrar shall stamp or otherwise mark the same accordingly, or until he has otherwise satisfied the registrar that the fact of such registration cannot be concealed from a purchaser or other person dealing with the land.

See L. T. R., 1898, r. 38, as to re-delivery of documents on completion of registration; and as to documents generally, *ib.*, rr. 20, 252—255.

This section must be read with the amendment contained in the First Schedule to the L. T. A., 1897, which is as follows:—

In the case of registration with a possessory title, the registrar may act on such reasonable evidence as may be prescribed as to the sufficiency of the documents produced, and as to dispensing with their production in special circumstances.

Where the deeds to be produced under this section are numerous, the registrar may act upon a statutory declaration by the solicitor of the applicant as to the deeds which require to be marked (L. T. R., 1898, r. 21); and may proceed with the registration of a possessory title where a deed cannot be produced: *ib.*, r. 22.

See, also, as to marking of notice on document sent in with application to register, *ib.*, r. 20.

After a title is registered, the title deeds, of course, must not be destroyed. In the case of a possessory title, the title deeds prior to registration are of the same importance as if the land had never been registered; and, in the case of an absolute title, they may relate to the title of other persons, and to matters excluded from the effect of registration. As to the registrar's power to destroy documents, see L. T. R., 1898, r. 255.

SS. 72, 73.

PROVISIONS
SUPPLE-
MENTAL TO
FOREGOING
PARTS OF ACT.

Where deeds are numerous, power to accept declaration.

Title deeds must not be destroyed.

73. All costs, charges, and expenses that are incurred by any parties in or about any proceedings for registration of land shall, unless the parties otherwise agree, be taxed by the taxing officer of the Court of Chancery as between solicitor and client, but the persons by whom and the proportions in which such costs, charges, and expenses are to be paid shall be in the discretion of the registrar, and shall be determined according to orders of the registrar, regard being had to the following provision; namely, that any applicant under this Act is liable *prima facie* to pay all costs, charges, and expenses incurred by or in consequence of his application, except in a case where parties object whose rights are sufficiently secured without their appearance, or where any costs, charges, or expenses are incurred unnecessarily or improperly, and subject to this proviso, that any party aggrieved by any order of the registrar under this section may appeal in the prescribed manner to the Court, which may annul or confirm the order of the registrar, with or without modification.

Costs of application for registry.

If any person disobeys any order of the registrar made in pursuance of this section, the registrar may certify such disobedience to the Court, and thereupon such person, subject to such right of appeal as aforesaid, may be punished by the Court in the same manner in all respects

SS. 73, 74, 75. as if the order made by the registrar were the order of the Court.

PROVISIONS
SUPPLEMENTAL TO
FOREGOING
PARTS OF ACT.

As to costs of an appeal to the Court on a question of indemnity, see L. T. A., 1897, s. 7 (5), *infra*.

See, as to appeals to the Court, L. T. R., 1898, rr. 231—247.

Costs
generally.

All costs incurred in any proceeding at the registry are now put on the same footing as costs under this section: L. T. R., 1898, r. 269; see, also, *ib.*, rr. 170, 171.

Doubtful Questions arising on Title.

Registrar
may state case
for Court of
law or direct
issue.

74. Whenever, upon the examination of the title to any land the registrar entertains a doubt as to any matter of law or fact arising upon such title, he may, upon the application of any party interested in such land refer a case for the opinion of any of Her Majesty's superior Courts, with power for the Court to direct an issue to be tried before any jury for the purpose of determining any fact; the registrar may also name the parties to such case, and the manner in which the proceedings in relation thereto are to be brought before the Court to which such case is referred.

See, as to questions arising on registration, L. T. R., 1898, r. 272.

Examiners of
title.

The provisions of this section are now, except, perhaps, as regards matters of fact, superseded by the power given to the registrar to refer the examination of any title to one of the examiners of title: L. T. R., 1898, r. 31. The registrar can act on his opinion (*ib.*), but any person may object to the opinion given by an examiner of title, and the point in dispute is to be decided by the registrar (*ib.*, r. 249), subject to an appeal to the Court: *ib.*, r. 233. The registrar may, under special circumstances, direct or transfer a reference to any one in particular of the examiners of title (*ib.*, r. 249), or take the advice of a specialist: *ib.*, r. 250.

Opinion of
Court or de-
cision of jury,
how far con-
clusive.

75. The opinion of any Court to whom any case is referred by the registrar shall be conclusive on all the parties to such case, unless the Court before whom such case is heard permits an appeal to be had.

Query, deci-
sion of Court
of first in-
stance final.

See notes to last section as to section being superseded.

Under this section the decision of the Court of first instance is

final, unless leave to appeal is given : but *see*, now, L. T. R., 1898, SS. 75, 76, 77, r. 244.

The marginal note is misleading.

PROVISIONS
SUPPLE-
MENTAL TO
FOREGOING
PARTS OF ACT.

76. Where any infants, married women, idiots, lunatics, persons of unsound mind, persons absent beyond seas, or persons yet unborn, are interested in the land in respect of the title to which any question arises as aforesaid, any other person interested in such land may apply to "the Court," as defined by this Act, for a direction that the opinion of the Court to whom the case is referred under this Act shall be conclusively binding on such infants, married women, idiots, lunatics, persons of unsound mind, persons beyond the seas, or unborn persons.

Intervention
of Court in
case of inca-
pacitated
persons.

See also s. 77, *infra*.

The power conferred by this section may be of considerable value, and the Court, having regard to the right to indemnity (L. T. A., 1897, s. 7), will, it is conceived, not be slow to exercise the power.

Power to bind
persons under
disability or
beyond seas.

"The Court" : *see* ss. 4, 114 ; L. T. R., 1898, r. 234.

77. The Court as defined by this Act shall hear the allegations of all parties appearing before it. It may disapprove altogether or may approve, either with or without modification, of the directions of the registrar in respect to any case referred as to the title of land ; it may also, if necessary, appoint a guardian or other person to appear on behalf of any infants, married women, idiots, lunatics, persons of unsound mind, persons absent beyond seas, or unborn persons ; and if such Court is satisfied that the interests of the persons labouring under disability, absent, or unborn, will be sufficiently represented in any case, it shall make an order declaring that all persons, with the exceptions (if any) named in the order, are to be conclusively bound, and thereupon all persons, with such exceptions (if any) as aforesaid, shall be conclusively bound by any decision of the Court having cognisance of the case in which such persons are concerned.

Power of
Court to bind
interests of
incapacitated
persons.

See note to s. 74, *supra*.

SS. 77, 78, 79,
80, 81.

As to appeals and applications to the Court, *see* L. T. R., 1898, rr. 231—247.

PROVISIONS
SUPPLE-
MENTAL TO
FOREGOING
PARTS OF ACT.

This section must be read with s. 76, *supra*. As to the general power to make representation orders, effect compromises, and bind absent parties, *see* R. S. C., O. XVI., rr. 9, 9a, 32a, 32b.

Power to
make repre-
sentation
orders.

*As to Land Certificates, Office Copies of Leases, and
Certificates of Charge.*

Loss of land
certificate,
or certificate of
charge, or
office copy of
lease.

78. *If any land certificate or office copy of a registered lease or certificate of charge is lost, mislaid, or destroyed, the registrar may, upon being satisfied of the fact of such loss, mislaying, or destruction, grant a new land certificate or office copy or certificate of charge in the place of the former one.*

Repealed: L. T. A., 1897, First Schedule, and replaced by L. T. A., 1897, s. 8 (3); and *see* L. T. R., 1898, r. 207.

Renewal of
land certifi-
cate, or
certificate of
charge, or
office copy of
lease.

79. The registrar may, upon the delivery up to him of a land certificate or of an office copy of a registered lease or of a certificate of charge, grant a new land certificate or office copy of a lease or certificate of charge in the place of the one delivered up.

As to renewals in case of loss, *see* L. T. A., 1897, s. 8 (3).

Office copies of registered leases will soon become obsolete: L. T. R., 1898, r. 55.

Land certifi-
cate, certifi-
cate of charge,
and office
copy of lease
to be evi-
dence.

80. Any land certificate or certificate of charge shall be *prima facie* evidence of the several matters therein contained, and the office copy of a registered lease shall be evidence of the contents of the registered lease.

As to production of certificate on registered dispositions, *see* L. T. A., 1897, s. 8 (1). As to contents of certificates, *see* L. T. R., 1898, Forms 61, 62.

Effect of
deposit of land
certificate.

81. *Subject to any registered estates, charges, or rights, the deposit of the land certificate in the case of freehold land, and of the office copy of the registered lease in the case of leasehold land, shall, for the purpose of creating a lien on the land to*

which such certificate or lease relates, be deemed equivalent to a deposit of the title deeds of the land.

SS. 81, 82, 83.

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MENTAL TO
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Repealed: L. T. A., 1897, First Schedule, and replaced by L. T. A., 1897, s. 8, last paragraph.

Special Hereditaments.

82. The registrar may register the proprietor of any advowson, rent, tithes impropriate, or other incorporeal hereditament of freehold tenure, *enjoyed in gross*, also the proprietor of any mines or minerals where the same have been severed from the land, in the same manner and with the same incidents in and with which he is by this Act empowered to register land, or as near thereto as circumstances admit.

Registry of
advowsons
and other
special here-
ditaments.

The registrar may also in the prescribed manner register any fee farm grant, or other grant, reserving rents or services to which the fee simple estate in any freehold land about to be registered or registered may be subject, with such particulars of the land or services, and the conditions annexed to the non-payment or non-performance or otherwise of such rent and services as may be prescribed, and any record so made shall be conclusive evidence as to the rents, services, and conditions so recorded, and such fee simple estate as last aforesaid shall be subject thereto accordingly.

The words in italics are repealed: L. T. A., 1897, First Schedule.

All hereditaments, corporeal and incorporeal, are to be deemed land within the meaning of the Acts, and may, therefore, be registered apart from this section: L. T. A., 1897, s. 24 (1).

All hereditaments may be registered apart from this section.

See L. T. R., 1898, rr. 61—67, as to registration of manors, rents, flats, minerals, undivided shares, and similar hereditaments; and, as to minerals, *see*, also, s. 18, *supra*, and note thereto. As to transfers in consideration of a rentcharge, *see ib.*, rr. 83, 84.

General Provisions.

83. The following enactments shall be made with respect to registration of title:

Enactments
as to regis-
tration.

(1.) *There shall not be entered on the register or be re-*

S. 83 (1). PROVISIONS SUPPLE- MENTAL TO FOREGOING PARTS OF ACT.	<i>ceivable by the registrar, any notice of any trust, implied, express, or constructive; and</i> This sub-s. is repealed by the First Schedule of the L. T. A., 1897, and the following sub-s. is substituted :—
No notice of trusts.	Neither the registrar nor any person dealing with registered land or a charge shall be affected with notice of a trust, express, implied or constructive; and references to trusts shall, as far as possible, be excluded from the register.
Effect of new sub-section.	Compare Companies Act, 1862, s. 30. The effect of the new sub-s. seems to be that a transferee of registered land or of a charge for valuable consideration will, so long as he is not stamped with fraud, take free from all equities unless duly protected in accordance with the Acts, notwithstanding actual or constructive notice of them. Also that the registrar may act notwithstanding any such notice.
Actual and constructive notice.	As to actual and constructive notice, <i>see</i> Wolst. B. & C., 7th ed. pp. 140—142; Goodeve's R. P., 4th ed. p. 294. As to a registered chargee, <i>see</i> s. 22, <i>supra</i>.
Sub-section does not apply to dealings under s. 49.	The new sub-s. must not be read as enabling the registered proprietor to defeat any paramount interest, whether an equity or not, which is preserved under a possessory or qualified title; nor are the equities affecting the estate of a registered proprietor (s. 7 (3), <i>supra</i>) displaced in favour of a voluntary transferee: s. 33. The words, "any person dealing with registered land" are wide enough to include a person dealing with the registered proprietor off the register, or a mortgagee by deposit (L. T. A., 1897, s. 8); but it is conceived that the amendment is not intended to be so construed (<i>see</i> s. 49, <i>supra</i>); however, a mortgagee by deposit will, under L. T. A., 1897, s. 8, last paragraph, take free from any equities of which he has no notice: <i>see</i> note to that paragraph.
Effect as regards vendor of registered land.	It is conceived that a vendor of registered land is a "person dealing with registered land" within the section, so that he will not be concerned, where he has notice that the purchase-money is trust money, to see that the transfer is made to the proper persons, or that the proper inhibitions or restrictions are entered: <i>cf. Mansfield v. Childerhouse</i>, 4 Ch. D. 82.
Effect of registration as regards trusts.	As regards trusts generally, the registration of a transferee for value would not discharge him from a trust constituted, <i>e.g.</i>, by reason of the purchase-money being trust property, nor, it is conceived, is it necessary for him to declare a trust of the land after registration, but the trusts, if any, which formerly affected the estate of the vendor are discharged unless they are rights para-

mount to his power to transfer, *e.g.*, rights unaffected by registration with a possessory title. To hold otherwise would prejudicially affect the rights of beneficiaries for no purpose, and thus run counter to the principle of the Acts: *cf.* the Preamble.

It is true that s. 30, *supra*, does not contain any provision analogous to s. 7 (3), but the discharge "from all other estates and interests whatsoever" in s. 30 must be read with reference only to estates and interests affecting the right of disposition of the vendor. So that, though on registration the purchasing trustee takes the land free from such estates, yet *eo instanti* the land becomes subject to the trusts affecting the purchase-money. The question will arise where trustees of a money settlement have power to invest in land to be conveyed to them on trusts for sale. As the trust for sale cannot be added to the transfer, a conveyance or declaration of trust off the register should be taken as well. The case of conveyances to uses in strict settlement is provided for by L. T. A., 1897, s. 6 (3); and L. T. R., 1898, r. 81.

S. 83 (1, 2, 3).

PROVISIONS
SUPPLEMENTAL TO
FOREGOING
PARTS OF ACT.

Purchase of
registered
land with
trust money.

- (2.) *No person shall be registered as proprietor of any undivided share in any land or charge, and a number of persons exceeding the prescribed number shall not be registered as proprietors of the same land or charge; and if the number of persons showing title exceeds such prescribed number, such of them not exceeding the prescribed number as may be agreed upon, or as the registrar may in case of difference decide, shall be registered as proprietors; and*

Repealed twice: L. T. A., 1897, s. 14 (1); and First Schedule.

An undivided share may now be registered: L. T. A., 1897, ss. 14, 24; and L. T. R., 1898, rr. 61, 67.

Undivided
shares may be
registered.

The compulsory provisions of the L. T. A., 1897, do not apply to undivided shares: L. T. A., 1897, s. 24.

There is now no limit to the number of persons who may be joint proprietors: *ib.*, s. 14 (1).

- (3.) Upon the occasion of the registry of two or more persons as proprietors of the same land or of the same charge, an entry may, *with their consent*, be made on the register, to the effect that when the number of such proprietors is reduced below a certain specified number, no registered disposition of such land or charge shall be made, except under the order of the Court [or of the registrar, after

S. 83 (3, 4).

PROVISIONS
SUPPLE-
MENTAL TO
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inquiry into title, subject to an appeal to the Court.

Subject to general rules, wherever registered land or a charge is to be entered in the names of two or more joint proprietors, the registrar shall make such entry under this sub-section as may be prescribed, unless it is shown to his satisfaction that the joint proprietors are entitled for their own benefit]; and

The words in italics are repealed, and the words within square brackets are added by the L. T. A., 1897, First Schedule.

For the prescribed form of entry, *see* L. T. R., 1898, First Schedule, Form 52.

Entry not re-
quired where
sole surviving
trustee has
power of
disposition.

An entry under this sub-s., as amended, need not be made where evidence is produced that a sole surviving trustee has power of disposition (L. T. R., 1898, rr. 185—187); in practice, it is conceived that the entry will rarely be used: *see* T. A., 1893, s. 22, which provides for the survivorship of trusts and powers. Compare S. L. A., 1882, s. 39, as to payment of capital money to not less than two S. L. A. trustees unless the settlement either expressly or impliedly (as in *Re Garnett Orme & Hargreaves' Contract*, 25 Ch. D. 595) authorizes the receipt of one trustee. If S. L. A. trustees (though having no express power of sale) are to be registered as proprietors of leasehold settled land (as to which, *see* L. T. R., 1898, r. 81, note), then an entry under this section would, in that case, appear to be proper if the settlement did not (having regard to T. A., 1893, ss. 20, 22) enable a sole trustee to give a receipt.

- (4.) Where land is registered in the names of husband and wife as co-proprietors, no registered disposition of such land shall take place until the wife, if alive, has been examined in the prescribed manner and has assented to such disposition after full explanation of her rights in the land and of the effect of the proposed disposition; and

Amendment.

This sub-s. does not apply in the case of a woman married after 1882, or to any property to which she is entitled for her separate use: L. T. A., 1897, First Schedule; and *see* ss. 44, 45, *supra*; and s. 87, *infra*, and notes thereto.

Examination
of married
women.

For the prescribed manner of examination, *see* L. T. R., 1898, rr. 273—275; *see*, also, s. 87, *infra*.

It seems that the sub-s. applies even where the married woman is entitled as a trustee or personal representative if she was married before 1883, as she cannot be entitled to trust property for her separate use.

S. 83 (4, 5, 6, 7, 8).

PROVISIONS
SUPPLEMENTAL TO
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PARTS OF ACT.

- (5.) *Registered land shall be described in such manner as the registrar thinks best calculated to secure accuracy, but such description shall not be conclusive as to the boundaries or extent of the registered land; and*
- (6.) *No alteration shall be made in the registered description of land, except under the order of the Court or by way of explanation; but this provision shall not be construed to extend to registered dealings with registered land in separate parcels by the registered description although such land was originally registered as one estate; and*

Trust
property.

Repealed: L. T. A., 1897, First Schedule; and replaced by L. T. A., 1897, s. 14 (2); and *see* L. T. R., 1898, rr. 209—221.

- (7.) Previously to registering any proposed purchaser as first proprietor of any land or to registering any disposition of land, it shall be the duty of the registrar to ascertain that all such stamp duties have been satisfied as would be payable if the land had been conveyed by an unregistered disposition to such proposed purchaser, or the disposition to be registered had been an unregistered disposition:

See L. T. R., 1898, rr. 164, 165, 263, 264, *infra*.

Stamp duty.

- (8.) The provisions of this Act with respect to the liability of registered land to succession duty and to the grant of a certificate by the Commissioners of Inland Revenue in respect of the exemption from succession duty, and to the notification of such exemption on the register, and to the effect of such notification, shall apply with the necessary variations to a registered charge under this Act.

As to death duties, *see* L. T. A., 1897, s. 13, and note thereto; and L. T. R., 1898, rr. 171—174. This sub-section ought to have

Succession
duty as
regards regis-
tered charges.

SS. 83 (8), 84. been amended to include estate duty in like manner as s. 18 (2), and provision (b), *supra*, to which it refers.

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Any question as to death duties affecting the *land* must be gone into when the charge is created; this sub-s. seems, however, to assume that a transferee of a mortgage debt is concerned with duties payable in respect of the *debt*, which, of course, is not the case.

Annexation
of conditions
to registered
land.

84. Where any land is about to be registered, or any registered land is about to be transferred to a purchaser for valuable consideration, there may be registered as annexed thereto, subject to general rules and in the prescribed manner, a condition that such land or any specified portion thereof is not to be built on, or is to be or not to be used in a particular manner, or any other condition running with or capable of being legally annexed to land, and the first proprietor and every transferee, and every other person deriving title from him, shall be deemed to be affected with notice of such condition; nevertheless, any such condition may be modified or discharged by order of the Court, on proof to the satisfaction of the Court that such modification will be beneficial to the persons principally interested in the enforcement of such condition.

Amended by the L. T. A., 1897, as follows:—

Amendment.

Conditions may be annexed to land at any time, and the section shall apply to any restrictive condition capable of affecting assigns by way of notice.

Restrictive
covenants.

This section and the amendment are designed to enable the effect of restrictive covenants to be obtained as regards registered land.

The burden of
the covenant.

The burden of a restrictive covenant in equity devolves on purchasers, who take with notice thereof: *Tulk v. Moxhay*, 2 Ph. 774.

The restrictive conditions, however, when entered up under this section, will not bind a purchaser by way of notice, but will be incumbrances (s. 7 (1), *supra*), subject to which he will take: L. T. R., 1898, rr. 7, 132, 184, and Form 36.

Restrictive
conditions,
how framed.

Restrictive conditions must be so framed as to be clear and intelligible when placed in the register of the land, without reference to any document or matter of law or fact which does not appear thereon: *ib.*, Form 36. Only restrictive covenants can be regis-

tered. Covenants to expend money or to do any work on the land cannot be registered, and should be made the subject of separate agreement: *ib.* As to the power for the registrar to refuse to enter improper conditions, *see ib.*, r. 149.

The benefit of a restrictive covenant may be entered in the Property Register (L. T. R., 1898, r. 3), but the benefit of the covenant does not, in some cases, pass with land unless expressly assigned: *see Renals v. Cowlshaw*, 9 Ch. D. 125; 11 Ch. D. 866; *Everett v. Remington*, 1892, 3 Ch. 148; hence, unless the form of transfer may be varied to include the benefit of the covenant, an assignment will be necessary off the register, and the purchaser, either by searching the back transfers, or by investigation of the title off the register, must satisfy himself that he gets the benefit of the covenant.

It is possible, however, that L. T. R., 1898, r. 3, is, as regards the benefit of a covenant, only intended to be used where, as is sometimes provided in a building scheme, the owner of each plot comprised in the scheme is to have power to enforce the covenants, whether expressly assigned or not. It is conceived, however, that there could be no objection to adding words to an instrument of transfer so as to pass the benefit of the covenant: L. T. R., 1898, rr. 147, 276, but the registrar's consent should be obtained.

On first registration, if conditions are to be annexed, they are to be stated in or delivered with the application: L. T. R., 1898, rr. 18, 26, and note thereto.

The last paragraph of the section seems to confer a wider jurisdiction on the Court to modify or discharge the restrictive conditions than that exercised in *Duke of Bedford v. Trustees of British Museum*, 2 M. & K. 552; *Knight v. Simmonds*, 1896, 2 Ch. 294.

See, as to restrictive covenants in relation to registered land, L. Q. R., 1886, pp. 334, 335.

SS. 84, 85.

PROVISIONS
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The benefit of
the covenant.

L. T. R.,
1898, r. 3,
how far
applicable.

Power for the
Court to dis-
charge the
restrictive
covenants.

85. All the provisions of the Trustee Act, 1850, and of any Act amending the same, shall apply to land and charges registered under this Act, but this enactment shall not prejudice the applicability to such land and charges of any provisions of such Acts relating to land or choses in action.

Registered
lands to be
within the
Trustee Act,
1850.

The T. A., 1850, is now replaced by the T. As., 1893 and 1894.

As to vesting declarations, *see* note to s. 49, *supra*.

Unless the words "this enactment" mean "this Act," it is difficult to assign any meaning to the last paragraph of the section. This paragraph seems to have been aimed at preserving the right to make a vesting order under T. A., 1850, s. 15, on the death of a sole trustee dying without an heir, and also the exemption from

"This enact-
ment."
Escheat or
forfeiture of
trust or mort-
gage estate.

SS. 85, 86, 87.

PROVISIONS
SUPPLE-
MENTAL TO
FOREGOING
PARTS OF ACT.

escheat or forfeiture of land or choses in action held in trust or by way of mortgage: T. A., 1850, s. 46. These sections of the T. A., 1850, are repealed by T. A., 1893, s. 51, and replaced only as regards forfeiture by s. 48. There is now no escheat as regards freeholds on the death of a sole trustee or mortgagee: Interpretation Act, 1889, s. 38 (2) (a); C. A., 1881, s. 30; but *query* if that section binds the Crown: *cf. In the goods of Hartley*, Times, 18th Nov., 1898; W. N., 1898, 155 (10); Challis R. P., 2nd ed. p. 36.

Indemnity of
registrar.

86. The registrar shall not, nor shall the assistant registrar nor any person acting under his authority, or under any order or general rule made in pursuance of this Act, be liable to any action, suit, or proceeding for or in respect of any act or matter *bonâ fide* done or omitted to be done in the exercise or supposed exercise of the powers of this Act, or any order or general rule made in pursuance of this Act.

This section should give the registrar confidence in using his discretion under L. T. R., 1898, rr. 70, 147, 276; *e.g.*, the registrar may safely add a restriction against a mortgage by deposit in the case of settled land: L. T. A., 1897, s. 8, last paragraph, and note.

As to Married Women.

Provision as
to married
women.

87. Where a married woman, entitled for her separate use, and not restrained from anticipation, is desirous of giving any consent, or becoming party to any proceeding under this Act, she shall be deemed to be an unmarried woman, but when any other married woman is desirous of giving any consent, or becoming party to any proceeding under this Act she shall be examined in the prescribed manner, and it shall be ascertained that she is acting freely and voluntarily, and the Court may, where it sees fit, appoint a person to act as the next friend of a married woman for the purpose of any proceeding under this Act, and may from time to time remove or change such next friend.

See ss. 44, 45, 83 (4), and notes thereto.

Restraint on
anticipation,
power to re-
move.

As to the discretionary power of the Court to remove a restraint on anticipation where it is shown to be for the married woman's benefit, *see* C. A., 1881, s. 39.

This section is not amended by the L. T. A., 1897, but it seems

that no examination is necessary in the case of a married woman entitled to separate property under the M. W. P. A., 1882.

As to the prescribed manner, *see* L. T. R., 1898, rr. 273—275, *infra*.

As to a married woman tenant for life, *see* S. L. A., 1882, s. 61. Either she or she and her husband will have the S. L. A. powers, and no separate examination will be necessary by reason of a restraint on anticipation: *ib.*, sub-s. 6.

SS. 87, 88.

PROVISIONS
SUPPLE-
MENTAL TO
FOREGOING
PARTS OF ACT.

As to Infants and Lunatics.

88. Where any person who (if not under disability) might have made any application, given any consent, done any act, or been party to any proceeding in relation to any land or charge under this Act, is an infant, idiot, or lunatic, the guardian or committee of the estate respectively of such person may make such applications, give such consents, do such acts, and be party to such proceedings, as such person respectively, if free from disability, might have made, given, done, or been party to, and shall otherwise represent such person for the purposes of this Act; where there is no guardian or committee of the estate of any such person as aforesaid, being infant, idiot, or lunatic, or where any person is of unsound mind or incapable of managing his affairs, but has not been found lunatic under an inquisition, it shall be lawful for the Court to appoint a guardian of such person for the purpose of any proceedings under this Act, and from time to time to change such guardian.

Provision as
to other
persons under
disability.

See notes to L. T. A., 1897, s. 6, and L. T. R., 1898, rr. 71, 131; *see*, also, as regards lunatics not so found, Lunacy Act, 1890, s. 116.

This section does not, it is conceived, confer any power on a guardian of an infant, or on the committee of the estate of a lunatic, to do any act on behalf of the infant or lunatic which they could not do if the land were unregistered, except that, in favour of a purchaser or chargee, no inquiry need be made as to the validity of the act.

Infants and
lunatics.

In no case, it is conceived, should the land or charge be registered in the name of the guardian or committee, but they will act on behalf of the infant or lunatic.

As to guardians' powers of alienation, *see* Simpson, *Infants*, 2nd ed. pp. 402—409; *see*, also, S. L. A., 1882, ss. 59, 60.

SS. 88, 89, 90.

PROVISIONS
SUPPLE-
MENTAL TO
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PARTS OF ACT.

As to powers of alienation of the committee of the estate of a lunatic, *see* Lunacy Act, 1890, ss. 116, 117, 120 (a), 124, 341; *Re Pagani*, 1892, 1 Ch. 236; Rules in Lunacy, 1892, r. 124, which shows that the committee conveys in the name of the lunatic; also S. L. A., 1882, s. 62. It seems, however, that on a sale under Lands C. C. A. 1845, s. 8, the committee would convey in his own name.

As to Notices.

Address of
persons on
register.

89. Every person whose name is entered on the register as proprietor of land or of a charge, or as cautioner, or as entitled to receive any notice, or in any other character, shall furnish to the registrar a place of address in the United Kingdom.

As to notices, *see* L. T. R., 1898, rr. 256—259.

Addresses for
service.

The address of any person as entered in the register is, unless he otherwise directs, to be his address for service. Any person may, if he desires, have two addresses entered in the register, to each of which all notices and other communications to him are to be sent: L. T. R., 1898, r. 260.

Service of
notices.

90. Every notice by this Act required to be given to any person shall be served personally, or sent through the post in a registered letter marked outside "Office of Land Registry," and directed to such person at the address furnished to the registrar, and unless returned, shall be deemed to have been received by the person addressed within such period, not less than seven days, exclusive of the day of posting, as may be prescribed.

As to notices sent by post, *see* L. T. R., 1898, rr. 258, 259.

As to address for service, *see* L. T. R., 1898, r. 260, and last section.

The prescribed period is seven days, exclusive of the day of posting (*ib.*, r. 258), except under r. 161.

No difficulty
as to notices.

This section, and the Rules, seem to enable all notices other than those directed by the registrar to be personally served, or, perhaps, those relating to Court matters, to be sent by post, and to get over any difficulty as to whether the notice is or is not actually received: and *see* s. 92, *infra*.

91. Her Majesty's Postmaster General shall give directions for the immediate return to the registrar of all letters marked as aforesaid, and addressed to any person who cannot be found, and on the return of any letter containing any notice, the registrar shall act in the matter requiring such notice to be given in manner prescribed.

For the prescribed manner in which the registrar is to act under this section, *see* L. T. R., 1898, r. 259, which enables the registrar to proceed without notice.

SS. 91, 92, 93.

PROVISIONS
SUPPLEMENTAL TO
FOREGOING
PARTS OF ACT.

Return of
notices by
post office.
Power to proceed without
notice.

92. A purchaser for valuable consideration shall not be affected by the omission to send any notice by this Act directed to be given, or by the non-receipt thereof.

Purchasers
not affected
by omission to
send notices.

It is conceived that this section applies in favour of a registered chargee to the extent of his charge.

A cautioner who, through no fault of his own, does not receive a notice of a disposition which ousts his rights, would either be maintained in possession in a proper case if in possession (L. T. A., 1897, s. 12), or else obtain indemnity: *ib.*, s. 7.

If a cautioner failed to keep proper addresses for service on the register, that would, it is conceived, be a default.

Specific Performance.

93. Where a suit is instituted for the specific performance of a contract relating to registered land, or a registered charge, the Court having cognizance of such suit may by summons, or by such other mode as it deems expedient, cause all or any parties who have registered estates or rights in such land or charge, or have entered up notices, cautions, or inhibitions against the same, to appear in such suit, and show cause why such contract should not be specifically performed, and the Court may direct that any order made by the Court in such suit shall be binding on such parties or any of them.

Power of
Court in suit
for specific
performance.

As to binding persons under disability, *see* ss. 76, 77, *supra*; and compare U. A., 1881, s. 70.

As to applications to the Court, *see* L. T. R., 1898, rr. 231—247.

C.

Power to bind
cautioners, &c.
in action for
specific per-
formance.

SS. 94, 95.

PROVISIONS
SUPPLE-
MENTAL TO
FOREGOING
PARTS OF ACT.

Costs in suit
for specific
performance.
Costs.

94. All costs incurred by any parties so appearing in a suit to enforce against a vendor specific performance of his contract to sell registered land or a registered charge shall be taxed as between solicitor and client, and unless the Court otherwise orders, be paid by such vendor.

See notes to s. 73, *supra*. Subject to an order, the section throws the costs on the vendor.

See also L. T. R., 1898, r. 269.

Rectification of the Register.

Establish-
ment of ad-
verse title to
land.

95. Subject to any estates or rights acquired by registration in pursuance of this Act, where any Court of competent jurisdiction has decided that any person is entitled to any estate, right, or interest in or to any registered land or charge, and as a consequence of such decision such Court is of opinion that a rectification of the register is required, such Court may make an order directing the register to be rectified in such manner as it thinks just.

See L. T. A., 1897, ss. 7, 12, and notes thereto; also L. T. R., 1898, r. 245.

"Estates
acquired by
registration."

In the case of an absolute title, first registration confers an estate (s. 7, *supra*); there can, therefore (save for the purposes of sub-ss. 1 and 3 of s. 7), be no rectification under this s. of the entry made on first registration. A transfer for value, where the title is absolute, also confers an estate (s. 30, *supra*), so that there can be no rectification under this s. of the entry made on a transfer for value, except to give effect to incumbrances entered on the register. A voluntary transfer, however, only confers an estate subject to unregistered estates, subject to which the transferor held (s. 33, *supra*), and the entry of a voluntary transferee can therefore be rectified under this s., save as respects rights defeated by the last transfer for value, until there has been a transfer for value. The estate of a fiduciary proprietor is in the same position: s. 46, *supra*.

In the case of a possessory title there may be rectification under this s. after first registration to the same extent as in the case of an absolute title, and in addition, so as to give effect to estates paramount to the estate conferred by first registration: s. 8, *supra*.

Meaning of
sect. 7,
sub-s. 3.

Sub-s. 3 of s. 7, *supra*, preserves the estates of "persons claiming under" the proprietor registered with an absolute title. The sub-s. would not save the rights of persons claiming by title paramount

under a defect in title not discovered on the investigation of the title. To have held otherwise would have rendered an absolute title valueless to the first registered proprietor: but *see*, now, L. T. A., 1897, s. 7 (1). SS. 95, 96, 97,
98.

The "persons claiming under" the registered proprietor must protect their interests by cautions, &c., to prevent the same being displaced by a transfer for value. PROVISIONS
SUPPLE-
MENTAL TO
FOREGOING
PARTS OF ACT.

As to correction of the register where the registered proprietor refuses to transfer to a paramount owner or cannot be found, *see* L. T. R., 1898, r. 101. And as to equities affecting the estate of the registered proprietor, *see* s. 83 (1), *supra*, and note thereto. Correction of
register.

As to correction of plans and verbal description, *see ib.*, r. 220.

96. Subject to any estates or rights acquired by registration in pursuance of this Act, if any person is aggrieved by any entry made or by the omission of any entry from the register under this Act, or if default is made, or unnecessary delay takes place in making any entry in the register, any person aggrieved by such entry, omission, default, or delay may apply to the Court in the prescribed manner for an order that the register may be rectified, and the Court may either refuse such application with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register. Register to be
rectified
under order
of Court.

See L. T. A., 1897, ss. 7, 12, *infra*, and notes thereto; also note to last section, and L. T. R., 1898, rr. 245, 246. Rectification
in case of
entry, omis-
sion, default,
or delay.

As to appeals and applications to the Court, *see* L. T. R., 1898, rr. 231—247, *infra*.

97. The registrar shall obey the order of any competent Court in relation to any registered land on being served with such order or an official copy thereof. Registrar to
obey orders of
Court.

As to office copy of order, *see* R. S. C., O. LXI., r. 7.

As to service of orders and applications on the registrar, *see* L. T. R., 1898, r. 246. Office copies
of orders to
be served on
registrar.

As to Fraud.

98. Subject to the provisions in this Act contained with respect to registered dispositions for valuable considera- Fraudulent
dispositions.

SS. 98, 99, 100.

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tion, any disposition of land or of a charge on land which if unregistered would be fraudulent and void, shall, notwithstanding registration, be fraudulent and void in like manner.

See L. T. A., 1897, s. 7, *infra*, and notes thereto. If a registered transferee for value or a registered chargee were himself stamped with the fraud he would not get a good title though able to confer one: s. 100, *infra*.

It is obligatory in the case of registered dispositions, including mortgages by deposit, for the intending transferee, chargee, or mortgagee at his peril to see that he is dealing with the registered proprietor. As to the meaning of "registered dispositions for valuable consideration," see note to L. T. A., 1897, s. 12.

See, also, ss. 30 and 40, as amended, *supra*. Though an intending purchaser or registered chargee may have notice of a trust, yet so long as he does not *know* that the trustee is intending to commit a breach of trust he will not be stamped with fraud: s. 83 (1), *supra*, as amended. He is under no obligation to make inquiries.

If, however, he accepts a bribe from the trustee, clearly he would be stamped with fraud.

Suppression
of deeds and
evidence.

99. If in the course of any proceedings before the registrar or the Court in pursuance of this Act any person concerned in such proceedings as principal or agent, with intent to conceal the title or claim of any person, or to substantiate a false claim, suppresses, attempts to suppress, or is privy to the suppression of any document or of any fact, the person so suppressing, attempting to suppress, or privy to suppression, shall be guilty of a misdemeanor, and upon conviction on indictment shall be liable to be imprisoned for a term not exceeding two years, with or without hard labour, or to be fined such sum not exceeding five hundred pounds as the Court before which he is tried may award.

Law of Property
Amendment Acts,
1859 and
1860.

Certain
fraudulent
acts declared
to be misde-
meanors.

Compare 22 & 23 Vict. c. 35, s. 24; 23 & 24 Vict. c. 38, s. 8, as to suppression of title deeds.

100. If any person fraudulently procures, attempts to fraudulently procure, or is privy to the fraudulent procurement of any entry on the register, or of any erasure from the register or alteration of the register, such person

shall be guilty of a misdemeanor, and upon conviction on indictment be liable to imprisonment for any term not exceeding two years, with or without hard labour, or to be fined such sum not exceeding five hundred pounds as the Court before which he is tried may award; and any entry, erasure, or alteration so made by fraud, shall be void as between all parties or privies to such fraud.

SS. 100, 101,
102, 103.

PROVISIONS
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MENTAL TO
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PARTS OF ACT.

See notes to s. 98, *supra*.

The last paragraph of the section makes it clear that no person stamped with fraud is to be able to take advantage of the register.

No ink is to be used by any person inspecting the register:
L. T. R., 1898, r. 223.

Privies to
any fraud not
to take ad-
vantage
thereof.

No ink to be
used on
searches.

False declara-
tions.

101. If any person in any affidavit or declaration required or authorised to be made for any purpose under this Act, or any order or general rules made in pursuance thereof, wilfully makes a false statement in any material particular, he shall be guilty of a misdemeanor, and upon conviction on indictment shall be liable to imprisonment, with or without hard labour, for any term not exceeding two years, or to be fined such sum not exceeding five hundred pounds as the Court before which he is tried may award.

See as to affidavits and statutory declarations, L. T. R., 1898, rr. 1 (5), 41, 76, 95, 96, 132, 136, 188, 194, 256, 261, 265, 267, 275; L. T. A., 1897, s. 16 (1) (ii); and s. 109, *infra*.

Affidavits and
statutory
declarations.

The declarations used for the purposes of the registry are not liable to duty (*ib.*, r. 261); as to whom they may be taken before, *see ib.*

102. No proceeding or conviction for any act declared by this Act to be a misdemeanor shall affect any remedy which any person aggrieved by such act may be entitled to, either at law or in equity.

Saving of
civil remedy.

103. Nothing in this Act contained shall entitle any person to refuse to make a complete discovery by answer in any legal proceeding, or to answer any question or

Saving of
obligation to
make dis-
covery.

SS. 103, 104,
105.

PROVISIONS
SUPPLE-
MENTAL TO
FOREGOING
PARTS OF ACT.

interrogatory in any civil proceeding, in any Court of law or equity, or in the Courts of bankruptcy; but no answer to any such bill, question, or interrogatory shall be admissible in evidence against such person in any criminal proceeding under this Act.

See s. 104, *infra*; also L. T. A., 1897, s. 22 (7); L. T. R., 1898, r. 222.

Inspection of Register.

Inspection of
documents.

104. Subject to such regulations and exceptions and to the payment of such sums as may be fixed by general rules, any person registered as proprietor of any land or charge, and any person authorised by any such proprietor, or by an order of the Court, or by general rule, but no other person, may inspect and make copies of and extracts from any register or document in the custody of the registrar relating to such land or charge.

See as to settlements, L. T. A., 1897, s. 6 (6); L. T. R., 1898, r. 72.

Secrecy of
register
maintained.
Back entries.

As to inspection, searches, and copies of the register, *see* L. T. A., 1897, s. 22 (7); L. T. R., 1898, rr. 14, 222—230.

The back entries in the register, whether withdrawn or not, may be inspected (L. T. R., 1898, r. 222); so also may back transfers under an order of the registrar (*ib.*); until destroyed: *ib.*, r. 233.

Instruments
of transfer,
when super-
seded.

Registration pursuant to a transfer supersedes the instrument of transfer unless it contains additional matter (*e.g.*, covenants for title); if the instrument of transfer is superseded it may be destroyed: L. T. R., 1898, r. 255.

Saving Clause.

Saving clause
as to escheat.

105. Nothing in this Act contained shall affect any right of Her Majesty to any escheat or forfeiture.

Tenure not
abolished,
query.

Tenure is not, it seems, abolished in the case of registered land, as an estate must be held of someone. There is, however, no saving of the rights of mesne lords, and on each transfer a new estate appears to be created: s. 30, *supra*; and *see* s. 6, *supra*, which refers to the proprietor as proprietor of the fee simple.

PART V.

ADMINISTRATION OF LAW AND MISCELLANEOUS.

(1.) *Office of Land Registry.*

106. There shall be an office in London to be called the Office of Land Registry, the business of which shall be conducted by a registrar to be appointed by the Lord Chancellor, with such number of officers (namely, assistant registrars, clerks, messengers, and servants,) as the Lord Chancellor, with the concurrence of the *Commissioners of Her Majesty's Treasury* as to number, may from time to time appoint.

S. 106.
—
ADMINISTRATION OF LAW AND MISCELLANEOUS.
—

Office of land registry, and appointment and payment of officers.

A person shall not be qualified to be appointed registrar unless he is a barrister of not less than ten years standing and a person shall not be qualified to be appointed an assistant registrar unless he is either a barrister or solicitor or certificated conveyancer of not less than five years standing.

The registrar, assistant registrars, clerks, messengers, and servants shall receive such salaries or remuneration as the *Commissioners of Her Majesty's Treasury* may from time to time direct.

The salaries of the registrar, assistant registrar, clerks, messengers, and servants, and such incidental expenses of carrying this Act into effect as may be sanctioned by the *Commissioners of Her Majesty's Treasury*, shall be paid out of moneys provided by Parliament.

The Lord Chancellor may from time to time make regulations for the office of land registry, and for assigning the duties to the respective officers, and determining the acts of the registrar which may be done by the assistant registrar, and may from time to time revoke and alter any such regulations, and make new regulations. All such regulations for the time being in force shall have effect as if they were enacted in this Act.

The words in italics are repealed : Statute Law Revision (No. 2) Act, 1893.

The office is situated at 34, Lincoln's Inn Fields, W.C.

Office.

SS. 107, 108,
109.

ADMINISTRA-
TION OF LAW
AND MISCEL-
LANEOUS.

Seal of office
of land
registry.

No proof of
seal required.

Registrar to
frame and
promulgate
forms.

Discretionary
powers of
registrar.

Power of
registrar to
summon
witnesses.

Powers to
compel
production of
certificates,
office copies,
maps and
other
documents.

107. There shall be a seal for the office of land registry.

Instruments under the seal of the registry are received in evidence without proof of seal: 8 & 9 Vict. c. 113, s. 1.

108. Subject to the provisions of this Act, the registrar shall conduct the whole business of registering land under this Act; he shall frame and cause to be printed and circulated or otherwise promulgated such forms and directions as he may deem requisite or expedient for facilitating proceedings under this Act.

As to discretionary powers of the registrar, *see* L. T. R., 1898, r. 276; and as to appeals to the Court, *ib.*, rr. 231—247.

Ordinary forms are supplied free of charge: L. T. R., 1898, r. 266.

109. The registrar or any officer of the registry office authorised by him in writing may administer an oath or take a voluntary declaration in pursuance of the Acts in that behalf for any of the purposes of this Act, and the registrar may, by summons under the seal of the office, require the attendance of all such persons as he may think fit in relation to the registration of any title; he may also, by a like summons, require any person having the custody of any map, survey, or book made or kept in pursuance of any Act of Parliament to produce such map, survey, or book for his inspection; he may examine upon oath any person appearing before him and administer an oath accordingly; and he may allow to every person summoned by him the reasonable charges of his attendance.

Any charges allowed by the registrar in pursuance of this section shall be deemed to be charges incurred in or about proceedings for registration of land, and may be dealt with accordingly.

See L. T. R., 1898, rr. 267, 268, *infra*.

The registrar has the same powers of compelling the production of certificates and office copies as are conferred on him by this and the next section with respect to the production of maps, surveys, books and other documents: L. T. A., 1897, s. 8 (1).

As to production of deeds, *see* s. 71, *supra*.

110. If any person, after the delivery to him of such summons as aforesaid, or of a copy thereof, wilfully neglects or refuses to attend in pursuance of such summons, or to produce such maps, surveys, books, or other documents as he may be required to produce under the provisions of this Act, or to answer upon oath or otherwise such questions as may be lawfully put to him by the registrar under the powers of this Act, he shall incur a penalty not exceeding twenty pounds, to be recovered on summary conviction; provided that no person shall be required to attend in obedience to any summons or to produce such documents as aforesaid unless the reasonable charges of his attendance and of the production of such documents be paid or tendered to him.

SS. 110, 111.

ADMINISTRATION OF LAW AND MISCELLANEOUS.

Non-attendance or refusal to answer questions.

The costs reserved by this section are one of the exceptions to L. T. R., 1898, rr. 247, 269.

Costs of attendance at registry.

111. Subject to the provisions of this Act, the Lord Chancellor may, with the advice and assistance of the registrar, from time to time make, and when made may rescind, annul, or add to, general rules in respect of all or any of the following matters; that is to say,

Power of Lord Chancellor to make general rules.

- (1.) The mode in which the register is to be made and kept; and
- (2.) The forms to be observed, the precautions to be taken, the instruments to be used, the notices to be given, and the evidence to be adduced in all proceedings before the registrar or in connection with registration, and in particular with respect to the reference to a conveyancing counsel of the Court of Chancery of any title to land proposed to be registered with an absolute title; and
- (3.) The custody of any instruments from time to time coming into the hands of the registrar, with power to direct the destruction of any such instruments where they have become altogether superseded by entries in the register, or have ceased to have any effect:

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TION OF LAW
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- (4.) The costs to be charged by solicitors or certificated conveyancers in or incidental to or consequential on the registration of land, or any other matter required to be done for the purpose of carrying this Act into execution, with power to require such costs to be payable by commission, per-centage, or otherwise, and to bear a certain proportion to the value of the land registered, or to be determined on such other principle as may be thought expedient; and
- (5.) The taxation of such costs and the persons by whom such costs are to be paid; and
- (6.) Any matter by this Act directed or authorised to be prescribed; and
- (7.) Any other matter or thing, whether similar or not to those above mentioned, in respect of which it may be expedient to make rules for the purpose of carrying this Act into execution :

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before both Houses of Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

Rule-making
body.

The rule-making authority is now the Lord Chancellor, with the advice and assistance of the registrar, a judge of the Chancery Division of the High Court to be chosen by the judges of that division, and three other persons, one to be chosen by the General Council of the Bar, one by the Board of Agriculture, and one by the Council of the Incorporated Law Society: L. T. A., 1897, s. 22 (2).

As to the further power to make general Rules, see L. T. A., 1897, s. 22 (6) (7).

Compare *Ex parte Mayor of London*, 25 Ch. D. 384.

Whether any
rule can be
ultra vires.

Sub-s. 7 of this section enables any Rule to be made "for the purpose of carrying this Act into execution," hence, unless a Rule

is in direct conflict with the Act, it is conceived that it cannot be *ultra vires*. SS. 111, 112, 113.

"Any rules made in pursuance of this section shall be deemed to be within the powers. . . ." The Rules must actually be in pursuance of the section, not merely expressed to be. ADMINISTRATION OF LAW AND MISCELLANEOUS.

For Rules, *see* Chap. IV., *infra*; and as to Fee Order and Small Holdings Rules, *see* Chap. V., *infra*.

112. The Lord Chancellor may from time to time, with the concurrence of *the Commissioners of the Treasury*, make, and when made revoke, alter, or add to rules with respect to the amount of fees payable under this Act, regard being had to the following matters: Principles on which fees determined.

- (1.) In the case of the registration of land or of any transfer of land on the occasion of a sale,—to the value of the land as determined by the amount of purchase money; and
- (2.) In the case of the registration of land, or of any transfer of land not upon a sale,—to the value of the land, to be ascertained in such manner as may be prescribed; and
- (3.) In the case of registration of a charge or of any transfer of a charge,—to the amount of such charge.

See Fee Order, Chap. V., *infra*, and L. T. A., 1897, s. 22 (4).

Orders under this section are now to be made by the rule-making authority (*see* last section), with the concurrence of the Treasury: Fee orders.
L. T. A., 1897, s. 22 (3).

The words in italics are repealed: Statute Law Revision (No. 2) Act, 1893.

As to the prescribed mode of valuation, L. T. R., 1898, r. 265, and Form 65. Mode of valuation.

As to method of paying fees and cancellation of fee stamps, *see* *ib.*, rr. 263, 264. Fees and fee stamps.

113. *The following rules shall be observed with respect to the fees payable in pursuance of this Act:* Mode of taking fees.

- (1.) *The fees shall, except so far as the Lord Chancellor, with the concurrence of the Commissioners of Her Majesty's Treasury, may from time to time otherwise direct, be taken by stamps; and if not taken by stamps,*

SS. 113, 114.

ADMINISTRA-
TION OF LAW
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shall be taken, applied, accounted for, and paid over in such manner as may be directed by the Commissioners of Her Majesty's Treasury with the concurrence of the Lord Chancellor; and

- (2.) *Such stamps shall be impressed or adhesive, as the Commissioners of Her Majesty's Treasury from time to time direct; and*
- (3.) *The Commissioners of Her Majesty's Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for regulating the use of such stamps, and for insuring the proper cancellation of stamps, and for keeping accounts of such stamps; and*
- (4.) *The Commissioners of Inland Revenue shall keep a separate account of all money received in respect of stamps under this Act, and subject to the deduction of any expenses incurred by those Commissioners in the execution of this Act, the money so received shall, under the direction of the Commissioners of Her Majesty's Treasury, be carried to and form part of the Consolidated Fund:*
- (5.) *Any person who forges or counterfeits any such stamp, or uses any such stamp, knowing the same to be forged or counterfeit, or to have been previously cancelled or used, shall be guilty of forgery, and be liable on conviction to penal servitude for a term not exceeding seven years, or to imprisonment, with or without hard labour, for a term not exceeding two years.*

Repealed: Statute Law Revision Act, 1883, but the practice and procedure under the repealed section remains unaffected (s. 1); and see, now, the Public Offices Fees Act, 1879.

Payment of
fees and
cancellation
of stamps.

As to payment of fees and cancellation of fee stamps: L. T. R., 1898, rr. 263, 264. The registrar is not to receive a document which, in his opinion, is not sufficiently stamped: *ib.*

Description and Powers of the Court.

"The Court"
to mean,
according to

114. For the purposes of this Act, "the Court" shall mean the Court of Chancery or the County Court, accord-

ing as the one or other of such Courts may be prescribed by the general Rules made for carrying into effect this Act.

The County Court shall, in cases where it has jurisdiction under this Act, have, for all the purposes of such jurisdiction, all the powers of the Court of Chancery.

Any jurisdiction of the Court of Chancery or County Court under this Act may be exercised by any judge of the said Court, whether sitting in open Court or in chambers.

The Court of Chancery must now be read the Chancery Division of the High Court of Justice: Judicature Act, 1873, ss. 3, 4, 31; Interpretation Act, 1889, s. 13.

All jurisdiction powers and duties, by the Acts or Rules expressed to be vested in the Court of Chancery or in the Court, are assigned to the senior judge of the Chancery Division: L. T. R., 1898, r. 234.

There is no Rule, at present, conferring any jurisdiction on a County Court,—this is probably advisable.

SS. 114, 115,
116.

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TION OF LAW
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circumstances,
Court of
Chancery and
County Court.

Jurisdiction
under
L. T. A's.
assigned to
senior judge
of Ch. D.

County Court
has no
jurisdiction.

115. The Lord Chancellor may from time to time assign the duties vested in the Court of Chancery in relation to matters under this Act to any particular judge or judges of that Court.

Lord Chan-
cellor may
assign duties
as to registry
to particular
judges.

See note to last section.

116. Any person aggrieved by any order of a judge of a County Court may, within the prescribed time and in the prescribed manner, appeal to the Court of Chancery.

Appeal from
County Court

The Court on hearing such appeal may give judgment affirming, reversing, or modifying the order appealed from, and may finally decide thereon, and make such order as to costs in the Court below and of the appeal as may be agreeable to justice; and if the Court alter or modify the order, such order so altered or modified shall be of the like effect as if it were the order of the County Court. The Court of Chancery may also, in cases where the Court thinks it expedient so to do, instead of making a

SS. 116, 117, final order, remit the case, with such directions as the
118. Court may think fit, to the Court below.

ADMINISTRA-
TION OF LAW
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See note to s. 114, *supra*.

The jurisdiction on appeal under this section is vested in the senior judge of the Chancery Division of the High Court: L. T. R., 1898, r. 234.

Prescribed
time and
manner of
appeal from
County Court.

The appeal from the County Court is to be by motion: L. T. R., 1898, r. 236. The time is twenty-one days from date of order, except with leave of Court or Court of Appeal (L. T. R., 1898, r. 244); but the County Court has no jurisdiction at present: *see* s. 114, *supra*, and note.

Appeal from
Court of
Chancery.

117. Any person aggrieved by an order made under this Act by the Court of Chancery otherwise than on appeal from a County Court, may appeal within the prescribed time, in the same manner and with the same incidents in and with which orders made by the Court of Chancery on cases within the ordinary jurisdiction of such Court may be appealed from.

The appeal is now to the Court of Appeal: Judicature Act, 1873, s. 4.

Appeal from
Ch. D.

The prescribed time is twenty-one days from the date of the order appealed from, except with the leave of the Court or of the Court of Appeal: L. T. R. 1898, r. 244.

As to District Registries.

Power to
form district
registries
by general
orders.

118. The Lord Chancellor, with the concurrence of the *Commissioners of Her Majesty's Treasury*, shall have power by general orders from time to time to do all or any of the following things:

- (1.) To create district registries for the purposes of registration of land within the defined districts respectively, and to alter any districts which shall have been so created; and
- (2.) To direct, by notice to be published in the "London Gazette," when (upon or after the commencement of this Act) registration of land is to commence in any district, and the place at which lands are to be registered; and

- (3.) To commence registration of land in any one or more district or districts, pursuant to any such notice; and
- (4.) To appoint district registrars, assistant district registrars, clerks, messengers, and servants to perform the business of registration in any district which may from time to time be created a district for registration under this Act.

SS. 118, 119,
120, 121.

ADMINISTRA-
TION OF LAW
AND MISCEL-
LANEOUS.

The Lord Chancellor may, with the like concurrence, from time to time make, rescind, alter, or add to any order made in pursuance of this section.

The words in italics are repealed: Statute Law Revision (No. 2) Act, 1893.

This section must be read with L. T. A., 1897, s. 22 (8). No order has been made as to district registries.

No district
registries.

As to the disadvantages of district registries, see L. Q. R., 1886, p. 339.

119. A person shall not be qualified to be appointed district registrar under this Act unless he is a barrister or solicitor or certificated conveyancer of not less than ten years' standing, and a person shall not be qualified to be appointed an assistant district registrar under this Act unless he is either a barrister or solicitor or certificated conveyancer of not less than five years' standing. A district registrar or assistant district registrar may, with the assent of the Lord Chancellor, follow another calling.

Qualification
of the district
and assistant
district
registrar.

If district registries are constituted, the provisions of this section must be regarded: L. T. A., 1897, s. 22 (8).

120. A seal shall be prepared for each district registry office, and any instrument purporting to be sealed with such seal shall be admissible in evidence, and if a copy, the same shall be admissible in like manner as the original.

Seal for dis-
trict registry.

See note to s. 107, *supra*.

121. Subject to general rules each district registrar and assistant district registrar shall, as regards the land within

Powers of dis-
trict registrar,
and appeals
from him.

SS. 121, 122,
123.

ADMINISTRA-
TION OF LAW
AND MISCEL-
LANEOUS.

his jurisdiction, have the same powers and indemnity as are herein given to the registrar and assistant registrar in the office of land registry, and there shall be the same appeal as in the case of the registrar; and any orders made by a district registrar or assistant district registrar may in like manner be made orders of and be enforced by the Court: Provided always, that the Lord Chancellor may, by general rules, make provision for the duties of district registrar, as regards all or any of the proceedings preliminary to first registration, or as regards any matters which the district registrar has to determine, or any other matters, being performed by the registrar or assistant registrar in the office of land registry, and for any district registrar, in any cases obtaining directions from or acting with the sanction of such registrar or assistant registrar; and any such orders may from time to time be rescinded, altered, or annulled by the Lord Chancellor, and all orders made in pursuance of this section shall be of the same force as if inserted in this Act, and shall be judicially noticed.

As to powers of the registrar, *see* ss. 108, 109, 110, *supra*; and L. T. R., 1898, rr. 31, 71, 101, 119, 231, 232, 276.

As to the indemnity of the registrar, *see* s. 86, *supra*.

Application
of general
orders, &c.,
to districts.

122. The general orders, rules, forms, directions, and fees for the time being applying to and payable in the office of land registry shall also apply to and be payable in all the district registries, subject to any alteration or addition for the time being made for any district by the Lord Chancellor, with the concurrence of the *Commissioners of Her Majesty's Treasury*, as to fees.

The words in italics are repealed: Statute Law Revision (No. 2) Act, 1893.

(2.) *Temporary Provisions.*

Transfer of
existing staff
to new
registry office.

123. The registrar, assistant registrar, examiners of title, clerks, messengers, and servants *at the time of the commencement of this Act* attached to the office of land registry, shall *from and after the commencement of this Act*

be attached to the office of land registry as constituted by this Act.

The registrar and other officers and persons so attached shall have the same relative rank, such rank being in the case of the assistant registrar above the rank of any other assistant registrar or any district registrar who may be appointed in pursuance of this Act, and hold their offices by the same tenure and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions or superannuation allowances, be entitled to the same pensions or superannuation allowances, as if this Act had not passed; and their service under this Act shall, as regards their claim to pension or superannuation allowance, be deemed a continuance of their former service, but in the event of any such officer being appointed to a new office in pursuance of this Act, service under the Land Registry Act, 1862, shall be deemed to be service under this Act for the purposes of entitling such last-mentioned officer to salary, superannuation, compensation, gratuity, or other allowances under the Superannuation Acts. The messengers and servants of the office of land registry shall, during the tenure of office by the existing registrar, be appointed and removed by him.

The Lord Chancellor may, by Rules, distribute the business to be performed in the office of land registry as constituted under this Act amongst the several officers attached thereto by this section, in such manner as he may think just; and such officers shall perform such duties in relation to such business as may be directed by such Rules, with this qualification, that the duties required to be performed by any officer shall be the same as or duties analogous to those which he performed previously to the passing of this Act.

The officers so attached as aforesaid, and their successors in office, shall for all the purposes of the Land Registry Act, 1862, so far as it will remain in operation after the passing of this Act, and for all the purposes of the Improvement of Land Act, 1864, and of the Mortgage Debenture Act, 1865, be deemed to be officers acting

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125, 126.

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TION OF LAW
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LANEOUS.

under the Land Registry Act, 1862, and having to discharge the duties belonging to officers acting under such Act.

The words in italics are repealed: Statute Law Revision (No. 2) Act, 1893.

Transfer of
books and
papers.

124. All books, documents, and papers in the possession of the office of land registry as constituted before the passing of this Act, or of any person attached to or performing any ministerial duty in aid of such office, shall be dealt with in such manner as the Lord Chancellor may by order direct, and any person failing to comply with any order of the Lord Chancellor made for the purpose of giving effect to this section, shall be punished in the same manner as if he had been guilty of a contempt of the Court of Chancery.

Registration
under Act of
1862 to cease,
&c.

125. *From and after the commencement of this Act,* application for the registration of an estate under the Land Registry Act of 1862 shall not be entertained.

The words in italics are repealed: Statute Law Revision (No. 2) Act, 1893.

Possible re-
registry of
estates
already
registered
under the
Act of 1862.

126. *From and after the commencement of this Act,* the Lord Chancellor may, by order, provide for the registration under this Act, without cost to the parties interested, of all titles registered under the Land Registry Act, 1862, and care shall be taken in such order to protect any rights acquired in pursuance of registry under such last-mentioned Act, and any order so made by the Lord Chancellor shall have the same effect as if it were enacted in this Act; *nevertheless it shall not be obligatory on any person interested in an estate registered under the said Land Registry Act, 1862, to cause such estate to be registered under this Act,* and until such estate is registered under this Act, the Act of 1862 shall apply thereto in the same manner as if this Act had not passed.

The words in italics are repealed: L. T. A., 1897, First Schedule, and Statute Law Revision (No. 2) Act, 1893.

For orders under this section, *see* Chap. V., *infra*. The title of land registered under the Land Registry Act, 1862, is to be transferred to the register under the L. T. As., 1875 and 1897, on the registration of any transfer (except by way of mortgage) or transmission of an estate in fee simple after the 1st January, 1898: *see* order of 29th December, 1897, Chap. V., *infra*.

SS, 126, 127.

ADMINISTRATION OF LAW AND MISCELLANEOUS.

Orders under this section.

Compulsory order to transfer titles from Act of 1862.

Land registered under Act to be exempted from registry of deeds.

Local Registries.

127. Any land situate within the jurisdiction of any of the following local registries; that is to say,

- (1.) The registry for the county of Middlesex; or
- (2.) The registry for the West Riding of Yorkshire; or
- (3.) The registry for the North Riding of Yorkshire; or
- (4.) The registry for the East Riding of Yorkshire and the town and county of the town of Kingston-upon-Hull;

shall, if registered under this Act, from and after the date of the registration thereof, be exempt from such jurisdiction; and no document relating to any such registered land executed and no testamentary instrument relating to any such registered land coming into operation subsequently to such date as last aforesaid shall be required to be registered in any of the said local registries.

This section must be read with the amendment contained in the First Schedule to the L. T. A., 1897, which is as follows:—

The section shall not apply to estates and interests excepted from the effect of registration under a possessory or qualified title, or to an unregistered reversion on a registered leasehold title, or to dealings with incumbrances created prior to the registration of the land.

Where, however, an incumbrance, created prior to registration of the land, is registered under L. T. R., 1898, r. 121, then it ceases to be subject to the jurisdiction of any local deeds registry: *ib.*, r. 122.

Registration, for the purpose of removing land from the local

Exemption from jurisdiction of deeds registries.

SS. 127, 128.

ADMINISTRA-
TION OF LAW
AND MISCEL-
LANEOUS.Yorkshire
registries.

deeds registries, is to be deemed to have taken place at the beginning of the day on which the application is delivered at the Land Registry Office: L. T. R., 1898, r. 24.

As to land removed from the register, *see* L. T. A., 1897, s. 17 (3).

The Lord Chancellor may enter into an agreement with the County Council of any of the three Ridings of Yorkshire for the transfer of the business of the local deed registry to the office of land registry: L. T. A., 1897, s. 23.

Compensation
to officers
of local
registries of
deeds.

128. If any person who is at the commencement of this Act a registrar of or an officer in any of the said local registries, suffers any loss of fees or emoluments by reason of the business in such registry being diminished in consequence of this Act, he may petition the Commissioners of Her Majesty's Treasury for compensation, and the Commissioners of Her Majesty's Treasury shall inquire whether any, and if any, what compensation ought to be made to the petitioner, regard being had to the conditions on which his appointment was made, the nature of his office, the duration of his service, the character of his fees or emoluments, and all the circumstances of the case. The petitioner shall render to the Commissioners of Her Majesty's Treasury such account of the fees and emoluments received by him during any period not exceeding five years before the passing of this Act, and during such period before the date of his petition, and give such information as the Commissioners of Her Majesty's Treasury may require for the purpose of enabling them to ascertain whether the petitioner has suffered the loss alleged by him, and whether any, and if any, what compensation ought to be made to him.

If the Commissioners of Her Majesty's Treasury think that the claim of the petitioner to compensation is established, they may award to him, out of moneys to be provided by Parliament, such compensation, by annuity or otherwise, as under the circumstances of the case they think just and reasonable.

This section is not printed in the revised edition of the statutes.

Repeal.

129. *The seventh section of the Vendor and Purchaser Act, 1874, is hereby repealed, as from the date at which it came into operation, except as to anything duly done thereunder before the commencement of this Act.*

S. 129.

ADMINISTRA-
TION OF LAW
AND MISCEL-
LANEOUS.

Repeal of
37 & 38 Vict.
c. 78, s. 7.

Repealed: Statute Law Revision Act, 1883. The repeal does not revive the enactment repealed: *ib.*, s. 1; and Interpretation Act, 1889, s. 11.

CHAPTER III.

LAND TRANSFER ACT, 1897

(60 & 61 VICT. c. 65).

An Act to establish a Real Representative, and to amend the Land Transfer Act, 1875. [6th August, 1897.]

38 & 39 Vict.
c. 87.

WHEREAS it is expedient to establish a real representative, and to amend the Land Transfer Act, 1875, in this Act referred to as "the principal Act:"

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

History of
Part I. of the
Act.

There can be little doubt that a large proportion of the difficulties arising on Part I. of the Act are due to the sections having been copied from the Land Transfer Bill of 1888 (*see* clauses 72—81 of that Bill), under which it was sought to assimilate the devolution of the beneficial interest in land on death to that of personal estate.

Part I. should
be repealed
and replaced.

Whatever view the Courts may take as to the construction to be placed on Part I., the only proper course in the interest of land-owners is to repeal and replace it by some provisions less open to objection: *see* Reports of General Council of the Bar and of The Institute of Conveyancers on the draft Conveyancing Bill, 1898.

Operation of
the Acts
confined to
England,
Wales, and
Berwick-on-
Tweed.

The L. T. As., 1875 and 1897, are to be construed together: *see* s. 26, *infra*. The L. T. A., 1875, applies only to England, Wales, and Berwick-on-Tweed: *see* s. 2 of that Act, and 20 Geo. 2, c. 42, s. 3. This Act should, therefore, be similarly restricted in its operation.

The expression "real representative" does not occur again throughout the Act, which strictly does not constitute a real representative at all.

PART I.

S. 1 (1, 2, 3,
4, 5).REAL REPRESENTATIVE.*Establishment of a Real Representative.*

1.—(1.) Where real estate is vested in any person without a right in any other person to take by survivorship it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time as if it were a chattel real vesting in them or him.

Devolution of legal interest in real estate on death.

(2.) This section shall apply to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.

(3.) Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.

(4.) The expression "real estate," in this part of this Act, shall not be deemed to include land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant.

(5.) This section applies only in cases of death after the commencement of this Act.

Part I. of the Act has rightly been the subject of much adverse criticism (*see, e.g.*, 42 Sol. J., pp. 42, 61, 179); but though the drafting leaves much to be desired, the Courts will endeavour to place such a construction upon it as will not introduce the numerous absurdities which a too rigid adherence to the letter would give rise to.

Principles of construction.

The preamble, which is sufficiently explicit as to the intention of the legislature to constitute a real representative, affords some assistance. For if the words of enactment in a statute have a meaning which does not go beyond the preamble, or which may come up to the preamble, that meaning is to be preferred to one showing an intention which would not answer the purposes of the preamble or which would go beyond them: *Overseers of West Ham v. Iles*, 8 App. Cas. 386, 389; *see, also, Re Marquis of Ailesbury's S. E.*, 1892, A. C. 356, 361, and the remarks of Chitty, J., in *Re Duke of Marlborough's Settlement*, 30 Ch. D. 127, at p. 131, and of Malins, V.-C., in *Crowder v. Stewart*, 16 Ch. D. 368, at p. 369.

Key to interpretation lies in preamble.

Many difficulties arise in the construction of the Act; for instance,

Difficulties in construction.

S. 1 (1, 2, 3,
4, 5).

REAL REPRESENTATIVE.

"Notwithstanding any testamentary disposition."

Meaning of word "vested."

Equitable as well as legal interests affected.

Meaning of real estate in absence of definition.

Effect of section.

Fee simple in possession.

Fee simple in remainder in land.
Contingent interests.

Uses to bar dower.

Trust and mortgage estates unaffected.

an estate tail and an estate for life may be real estate vested in a person, so that on the death of a tenant in tail or for life, it might, but for the absurdities which it would involve, be contended that the fee passes to the personal representative.

Again, the words "notwithstanding any testamentary disposition" are not necessarily restrictive of the scope of the section to such property as might have been disposed of by the will of the deceased (*Scott and Alvarez's Contract*, 1895, 2 Ch. at pp. 611, 612); but it is conceived that they will here be held to be so restrictive.

Further, can a contingent interest in real estate be said to be vested? It is conceived that the word "vested" here will not be read in its usual technical sense (*i.e.*, as the opposite of "contingent"), but in its original sense, which implies no more than mere ownership: Goodeve, R. P., 4th ed. p. 240.

The section applies to equitable estates as well as legal, notwithstanding the marginal note: *Sutton v. Sutton*, 22 Ch. D. 511.

The chief difficulty is the absence of any definition (except the negative one in sub-s. (4)) of the expression "real estate." It is submitted that the expression is contrasted with "personal estate" (sub-s. (3)), and should be given the same meaning as the like expression in a will. The expression "real estate" does not occur in the Act after ss. 1, 2, but the word "land" takes its place. The latter has not the meaning assigned to it by the Interpretation Act, 1889, s. 3 (L. T. A., 1875, s. 4), but is independently defined to include all hereditaments, corporeal and incorporeal: s. 24, *infra*, and note thereto.

Confining the meaning of the expression real estate to property other than copyholds which is not personal estate, and which was, before 1898, capable of being disposed of by the will of the deceased, an intelligible construction can be placed upon the Act, and one which will, in the main, give effect to testamentary dispositions made before the commencement of the Act.

The effect of the section based on this construction is now given.

On the death after 1897 of a person solely and beneficially seised of or entitled to land in fee simple in possession, the fee devolves to his personal representative in the character of real representative.

The section does not say "vested in possession," hence, an estate in fee simple in remainder devolves under the section.

Contingent interests in real estate capable of being disposed of by the will of the deceased are "real estate" within the Act, and may be said to be vested as above explained.

Where land is limited to uses to bar dower, the person in whose favour the uses are limited has a vested estate in fee simple in remainder expectant upon his own death, the fee, therefore, devolves on his death under the section.

The devolution of trust and mortgage estates is not affected by the Act; they continue to devolve under C. A., 1881, s. 30.

The right of survivorship under a joint tenancy or, it is conceived, under a tenancy by entireties, remains unaffected. S. 1 (1, 2, 3, 4, 5).

On the death of one of several coparceners the estate of the one dying will devolve under this section, as there is no survivorship: Co. Litt. 164a; *Cooper v. France*, 14 Jur. 214; 19 L. J. N. S. 313; and see Goodeve, R. P., 4th ed. p. 262. REAL REPRESENTATIVE.

A base fee will devolve under the section to the extent of the base fee. Joint tenants and tenants by entireties. Coparceners.

There is no devolution under the section on the death of a tenant for life: compare s. 6 (4), (8), *infra*; and L. T. R., 1898, r. 132. Base fee. Tenant for life.

It is conceived that an estate *pur autre vie*, limited to the heir as special occupant, is within the section; for such an estate is a freehold interest descendible to the heir; the heir does not, it seems, take by purchase, but by a *quasi* descent: see L. Q. R., 1890, pp. 230—232; and Wolst. B. & C., 7th ed. p. 24; *Grey v. Mannock*, 2 Eden, 339; *per contra*, *Re Michell*, 1892, 2 Ch. at p. 96. Estate *pur autre vie*.

An estate *pur autre vie*, limited to the heir as special occupant, was assets in the hands of the heir (Wills Act, 1837, s. 6), hence, is now assets in the hands of the personal representative: compare C. A., 1881, s. 30. Other estates *pur autre vie*, of course, pass to the personal representative without the aid of this section: see Wills Act, 1837; also *Earl of Mountcashell v. More-Smyth*, 1896, A. C. 158; *Re Sheppard*, 1897, 2 Ch. 67.

On the death of a tenant in tail, whether leaving issue inheritable under the entail or not, the estate will not pass to the personal representatives of the deceased. Real estate is to devolve as if it were a chattel real, and an estate tail cannot exist in a term of years. Estate tail.

That no devolution takes place under the Act on the death of a tenant in tail should also be clear, apart from the many absurdities involved, from the omission of any express provisions to give effect to such a change in the law (*cf.* Bankruptcy Act, 1883, s. 56 (5)), which gives a trustee in bankruptcy power to bar his bankrupt's estate tail. No such power is conferred on the personal representatives.

The M. W. P. A., 1882, which, perhaps, for looseness of expression, deserves to rank second only to Part I. of the present Act, in terms, contains provisions which would be sufficient to exclude the rights of the husband as tenant by the curtesy, but the absence of express enactment was held to negative this view, and the Court compared the express provisions of another statute on the subject of married women: *Hope v. Hope*, 1892, 2 Ch. 336, 340.

Further, if it be admitted that, on the death of a tenant for life, the whole fee does not pass, so as to become liable for the debts of the deceased, why draw any distinction between the two estates? No doubt one is an estate of inheritance, and the other is not, but

S. 1 (1, 2, 3,
4, 6).

REAL REPRESENTATIVE.

How far
estates tail
liable for
debts, &c.

Personal
representa-
tives as such
are not S. L.
A. trustees.

Personal
representa-
tives as
regards a base
fee do not
have the
powers of a
tenant for
life.

why should the personal representative who is, in effect, an assign of the deceased be in a better position than a purchaser from a tenant in tail who fails to enrol his purchase deed as a disentailing assurance within the six calendar months? Moreover, a tenant in tail is a "tenant for life" (S. L. A., 1882, s. 58 (1) (i)), for the purposes of s. 6 (4), (8), *infra*, and L. T. R., 1898, r. 132, which, in the case of registered land, throw the duty of registering the successor on the trustees of the settlement, and not on the personal representatives.

An estate tail in the hands of the heir is not assets for payment of the ancestor's debts, except Crown debts, though, as against both the heir or any person whose estate the ancestor might have barred without the assent of another person, it is liable for judgment debts where the land has actually been delivered in execution (1 & 2 Vict. c. 110; 27 & 28 Vict. c. 112), but this is not a sufficient reason for holding that an estate tail passes in such cases to the personal representatives, though it does constitute a distinction from an estate for life.

Though the personal representatives as such, have a power of sale for the purposes of administration, they are not trustees within S. L. A., 1882, s. 2 (8), or S. L. A., 1890, s. 16. Chattels real have always been within the S. L. As., and no one has ever suggested that where a testator bequeaths leaseholds in strict settlement, that his executors, until they have assented to the bequest, are trustees for the purposes of the S. L. As. Either the leaseholds are disposed of for purposes of administration, or the assent is given, and then relates back to the death of the testator. No purchaser accepts a title under the S. L. As., unless the assent express or implied is shown, neither will he do so as regards real estate passing by virtue of this section. Moreover, when once the personal representative has assented to a devise, or conveyed the land to the heir, his power of sale is gone.

Where a base fee vested in the personal representatives under this section is in possession, it has been suggested that under S. L. A., 1882, s. 58 (1) (iii), they have the powers of a tenant for life, but that section must be read in connection with s. 2 (5), which defines "a tenant for life"; it is clear that the principle of the S. L. As. is to give the powers to the beneficial owner, and not to his trustee (an equitable tenant for life can convey the legal fee vested in the trustees of the settlement), hence the person beneficially interested in the base fee will have the powers, but the estate of the personal representatives being paramount to the settlement (*see* S. L. A., 1882, s. 20), he can only convey, subject to that estate; it is conceived, however, that an assent to the devise given subsequently to the statutory conveyance would, inasmuch as it relates back, enable the legal estate to pass by the conveyance; but to confirm his title, the purchaser should, in such a case, take a conveyance, if practicable, from the personal representative.

Rights of entry may be divided into two classes:—(1) Rights of entry at Common Law, *e.g.*, where there has been a disseisin: Co. Litt. 277a and 266a; Challis R. P., 2nd ed. 207. (2) Rights of entry by contract for condition broken, *e.g.*, where on a grant in fee farm, a right of entry is reserved to the grantor and his heirs for securing payment of the rent; or where a right of entry is conferred under a lease.

As regards rights of entry at common law, if, as appears to be suggested (Challis R. P., 2nd ed. p. 46, note, citing Co. Litt. 20a, and *Rowlet's Case*, Dy. 188a), they are within *De Donis*, it follows that they are tenements, and therefore real estate: Burton, 7th ed. pl. 1—4. The references to Co. Litt. and *Rowlet's Case*, *ubi supra*, seem, however, merely to show that where an ineffectual recovery is suffered by a tenant in tail, a release by him of his right to bring a writ of error to have the record of the recovery expunged, does not operate to render valid the recovery, as against the heirs, inheritable under the entail. In other words, it is not the mere right to bring the writ of error, which passes to the heirs, but they claim under the original donee in tail, and have a new right of action to set aside the recovery, and obtain possession of the land.

These rights of entry are now devisable (Wills Act, 1837, s. 3) and assignable (Real Property Act, 1845, s. 6): and see 32 Hen. VIII. c. 9, s. 2, repealed, *infra*. Whether real estate or not, it may, perhaps, be contended that the preamble extends the definition so as to cover both classes of these rights.

As regards rights of entry for condition broken, these are also devisable (Wills Act, *supra*), and are also assignable, except as regards the benefit of a condition already broken: *Crane v. Batten*, 23 L. T. 220; 2 O. L. R. 1696; *Hunt v. Bishop*, 8 Ex. 675, 680; *Hunt v. Remnant*, 9 Ex. 635, 640; *Jenkins v. Jones*, 9 Q. B. D. 128, 131; but see Challis, R. P., 2nd ed. p. 67, note; Litt. s. 347. Also, it is conceived that, where a power of entry, not being a mere personal power, is either expressly or under C. A., 1881, s. 44, conferred for securing a rentcharge, the right of entry becomes annexed thereto, so that where the rent vests in the personal representative the right of entry vests likewise. If the power is given to the owner of the rent, his heirs and assigns, it is, perhaps, arguable that the personal representative takes the power as a testamentary assign.

It has been suggested (Challis R. P., 2nd ed. pp. 46, 66, note) that the benefit of a right of entry for condition broken is a mixed hereditament; clearly it is a hereditament (*Winchester's Case*, 3 Rep. 1), but *query* whether it is mixed: see note, *supra*, "common law right of entry, whether a tenement."

If it be the case that rights of entry for condition broken are mixed hereditaments, then it seems to follow that rights of entry at

S. 1 (1, 2, 3, 4, 5).

REAL REPRESENTATIVE.

Whether rights of entry are real estate within the section, *query*.

Common law right of entry, whether a tenement.

Rights of entry for condition broken.

If mixed hereditaments, then real estate.

S. 1 (1, 2, 3, 4, 5). common law are also mixed hereditaments (*see* Litt. s. 347), so that both classes would be real estate.

REAL REPRESENTATIVE. Rights of entry are rights of property (Co. Litt. 266a), and being rights in respect of real estate, it is possible that on this ground they might be held to be within this section.

As to whether the rule against perpetuities applies to a common law condition, *see* Challis R. P., 2nd ed. pp. 174—177; Gray, Perpet. 213—223; 2 Dav. Prec., 4th ed. pp. 508, 511; 1 K. & E., 5th ed. 305, 306; also 42 Sol. J. 628; it is conceived that, at any rate, a right of entry which is annexed to a rentcharge is not subject to the rule, any more than the rentcharge itself.

Distinction from estate deemed to be in possession under Statute of Uses.

Rights of entry must be distinguished from a right of action to recover land in virtue of an estate; for instance, under a shifting use, where the person entitled to the use is, under the Statute of Uses (27 Hen. VIII. c. 10), deemed to be in possession of the land; clearly in this case the land will devolve on the personal representative.

Rights of entry ought to devolve on real representative.

Whether the section is effectual to pass rights of entry or not, it seems clear that they should be made to pass to the real representative (Draft Conveyancing Bill, cc. 2 (1), 3 (2), 13 (1) (i), (10), *infra*, Appendix), and the heir or devisee should be given a power to take proceedings for recovery of the land, but without prejudice to the rights of the real representative.

Adwosons.

An advowson vests under the section in the personal representative; but if a vacancy occurs during administration, the personal representative cannot present his own nominee, for the right to present cannot be sold during a vacancy (*Brooksby's Case*, Cro. Eliz. 174; *Baker v. Rogers*, *ib.* 788), nor can the personal representative make any profit out of it for administration purposes; and since, subject to his powers for administration, the personal representative is a trustee for the heir or devisee (s. 2 (1)), it follows that the personal representative is bound to present the nominee of the heir or devisee: 2 Atk. 483; 2 W. Black's Rep. 1053; *Johnstone v. Baber*, 6 De G. M. & G. 439; *see*, now, as to sales after 1898 of advowsons, Benefices Act, 1898.

Manors, tithes, rentcharges, &c. Titles of honour.

Manors, tithe, and other rentcharges, easements, and profits *à prendre* are, while titles of honour clearly are not, within the section.

New River shares.

New River shares, and shares in some similar undertakings, are real estate, and devolve under the section: Challis, R. P., 2nd ed. p. 46.

No power to appoint a separate real representative.

The section is not framed in a very logical manner. Though a testator may appoint special executors of a fund and general executors of the rest of his personalty (*Rose v. Bartlett*, Cro. Car. 292; *see*, however, *Owen v. Owen*, 1 Atk. 494), the section seems to vest the real estate either in all the executors, special and general (if appointed), or perhaps only in the general executors. At any

rate, there is no express power to enable the appointment of a real representative, but the Act makes the personal representative in that character real representative, and constitutes him real representative where there is no personalty, and where he cannot properly be personal representative: *cf. Re Parker's Trusts*, 1894, 1 Ch. 707, 722; also *Roll v. Osborn*, Hobart's Reports, 3rd ed. p. 25. It is conceived that the appointment of special executors of a small fund of personalty and also of the real estate would not oust the general executors as regards the real estate. Several executors constitute one person at law, and on death of one the office survives: *Flanders v. Clarke*, 3 Atk. 509. As regards creditors, both special and general executors must be sued jointly with respect to property comprised in a limited grant: *Re Parker's Trusts*, *ubi supra*, at p. 714.

S. 1 (1, 2, 3, 4, 5).

REAL REPRESENTATIVE.

One result is that there cannot be a real representative apart from the personal representative. This seems intended to be so (*see sub-s. 3, supra*, and s. 2 (3), *infra*), but it is inconvenient. For instance, a testator may wish to leave all his personal estate to his wife and appoint her executrix, and to leave his land to trustees on trust. He cannot make his wife executrix without vesting the land in her, with the responsibility of management during administration, and he cannot vest the land in the trustees without making them joint executors with his wife. The executors should have been made executors of the real estate, and should in that character be called real representatives, and there should be power for a testator and for the Court to appoint separate persons to be real representatives and personal representatives: *see* Draft Conveyancing Bill, c. 13 (2), (8), Appendix, *infra*.

No real representative apart from personal representative.

The Court, in the case of personal estate, has power to grant separate administrations, though it leans against granting them (*In the goods of Newbold*, 1 P. & D. 285); it is conceived that it has no such power as regards real estate: *see In the goods of Ardern*, 1898, P. 147, where administration was granted in respect of real and personal estate to a guardian *ad litem* of an infant in place of the husband.

How real representatives should have been constituted.

It has been suggested that separate representatives of the real estate are not permitted, because they might be made a means of evading the Act: compare *Re Parker's Trusts*, 1894, 1 Ch. 707—722. But it is submitted that this cannot be so, for the separate real representatives, just as much as the personal representatives, would be under the jurisdiction of the Court, and be bound to administer duly the real estate. If the real representative, on a request by the personal representative, who adduced sufficient reasons to show that the personal estate was insufficient, refused to realise the real estate for purposes of administration, then it is submitted that the Court would be right in directing any unnecessary costs incident to the refusal to be paid by the real representative personally. The main object of a real representative is to

Power to appoint separate representative of real estate would not defeat the object of the Act.

S. 1 (1, 2, 3, 4, 5). render an administration action unnecessary; this and other objects would be equally well served whether the administration was separate or not.

REAL REPRESENTATIVE.

Heir or devisee ousted during administration.

Another result of vesting the real estate in the personal representatives, as such, is to oust the heir or devisee during the period required for administration, unless the personal representative conveys or assents under s. 3 (1), *infra*, subject to a charge for any money he is liable to pay; this conveyance or assent would, however, vest the real estate in the beneficiary, whose concurrence would be necessary in case resort was had to the real estate for purposes of administration: *cf.* Draft Conveyancing Bill, c. 15; in Appendix, *infra*.

Mere possession as bailiff for the representative would not, however, constitute an assent.

Where the real and personal estates of a testator are, by his will, made to devolve in different directions, then, where the real estate consists of property involving continuous expenditure for up-keep, the executors should be authorized by the will to expend money in their hands on the real estate, and given a charge thereon for all money reasonably expended.

As to the extent of representation, *see* Wms. Exors. 9th ed. 226, note (i), 234, note (p), 257; *Wankford v. W.*, 1 Salk. 299, 308.

Executor by representation.

Administrator *de bonis non*.

Administrator during a minority.

Personal inheritance not within section.

An executor by representation would be a personal representative within the meaning of this section; also, an administrator *de bonis non* (but *see* note to s. 2 (1), *infra*), or an administrator appointed during a minority: *see* s. 24 (2), *infra*. As to the appointment of a judicial trustee in place of an executor, *see Re Ratcliff*, 1898, 2 Ch. 352.

A personal inheritance, such as an annuity limited to A. and his heirs, though a hereditament within C. A., 1881, s. 30, is not, it seems, real estate within this section: *see* Co. Litt. 2 a. This is clearly a mistake.

Implied and secret trusts.

This section removes the doubt, which, however, appears to be without proper foundation, whether s. 30 of the C. A., 1881, applies to secret or implied trusts, since the legal estate will devolve either under that or this section.

Real estate saved from lapse.

A devise of real estate saved from lapse under s. 33 of the Wills Act, 1837, which artificially prolongs the life of the devisee, would be real estate vested in the deceased devisee, and would devolve accordingly.

Devolution of chattels real unaltered.

As "real estate" is to vest as if it were a chattel real, it seems that the expression cannot here include chattels real. These devolve, therefore, on the personal representatives by virtue of the existing law, and not under this section. If not, then the power (seldom relied on) of one of several personal representatives to convey a chattel real is destroyed: *see* s. 2 (2), *infra*.

Rules of limitation unaltered.

This section rightly leaves unaltered the rules of limitation of

real estate; hence the fee in unregistered land can still only pass in a deed under the general law by means of the words "heirs," "in fee simple," or other proper words of limitation.

S. 1 (1, 2, 3, 4, 5).

REAL REPRESENTATIVE.

Notwithstanding this section, if there are no personal representatives real estate seems to vest in the heir or devisee, subject to be divested when personal representatives are constituted, so that the heir or devisee cannot convey (*see Re Pilling's Trusts*, 26 Ch. D. 432; and *Re Williams' Trusts*, 36 Ch. D. 231; also Wolst. B. & C., 7th ed. p. 85); hence, except where a vesting order can be obtained (T. A., 1893, ss. 25—41), probate or letters of administration for purposes of evidence in respect of real estate will always be required.

Where administration to real estate rendered requisite.

"Personal estate" in s. 19 of the Court of Probate Act, 1858, includes chattels real, but there is nothing in s. 1 to vest real estate in a Judge of the High Court, before and until administration is taken out; nor can s. 19 be said to be an enactment relating to the effect of letters of administration, which is applied to real estate by s. 2 (2), *infra*.

It is conceived that there is no sufficient ground for the doubt expressed in Emmet's Notes on Perusing Titles, 3rd ed. p. 288, as to whether an administrator, when appointed, will be able to pass the legal estate.

Administrator can pass legal estate of the intestate.

Sub-s. 2 affects only the case of a general power of appointment by will (*see Wills Act*, 1837, s. 27); property, therefore, over which the deceased had a general power of appointment by deed or any special power, will devolve as at present. As to handing appointed property over to executors: *Re Hoskin's Trusts*, 6 Ch. D. 281; *Re Van Hagan*, 16 Ch. D. 18.

General power of appointment.

Real estate, subject to a general power of appointment which is exercised by will in favour of volunteers, is assets for the payment of the appointor's debts: *George v. Milbanke*, 9 Ves. 190; *Farwell Powers*, 2nd ed. 254 *et seq.*

Appointed real estate assets for payment of debts.

As to property appointed by a married woman, *see Farwell Powers*, 2nd ed. p. 256.

Appointment by married woman.

The constitution of a real representative might have been so effected as to render unnecessary, so far as regards purchasers and mortgagees, any proof of heirship and any investigation of rights acquired under settlements or wills with respect to registered or unregistered land: *see Conv. Bill*, cc. 9 (viii) (xii); 11 (vi); 13; 14, in Appendix, *infra*. This has not been done by this Act in the case of unregistered land.

Effect of constituting real representative.

The policy of the law now seems to demand that land of copyhold or customary tenure should be left strictly alone, with a view to encourage enfranchisement.

Copyholds excluded.

The definition in sub-s. 4 corresponds with L. T. A., 1875, s. 2, and is probably designed to cover those cases, which, it is believed, occur in Westmoreland, where the legal estate in customary free-

What customary freeholds pass under the section.

SS. 1 (1, 2, 3, 4, 5), 2 (1). holds passes without any act on the part of the lord, though he may, in order to keep a record of the persons liable for services,

REAL REPRESENTATIVE. substitute the names on the rolls.

Crown not bound by section.

The Crown is not bound by this section; hence, on the death of a bastard intestate without issue, his real estate will pass direct to the Crown: *In the goods of Hartley*, Times, 18th November, 1898; W. N. 1898, 155 (10).

The Act came into operation on the 1st January, 1898: s. 25, *infra*.

Provisions as to administration.

2.—(1.) Subject to the powers, rights, duties, and liabilities herein-after mentioned, the personal representatives of a deceased person shall hold the real estate as trustees for the persons by law beneficially entitled thereto, and those persons shall have the same power of requiring a transfer of real estate as persons beneficially entitled to personal estate have of requiring a transfer of such personal estate.

Real representatives made trustees.

It may be doubted whether this sub-section, by making the personal representative a trustee, does not in so doing take away some of his powers as real representative. It was no doubt intended only to make him a trustee after the estate had been fully administered.

Devolution of legal estate on death of sole surviving executor.

Real estate, by s. 1 (1), *supra*, is made to vest in the personal representatives or representative from time to time; the legal estate therefore passes to the executor of a sole surviving executor; but the personal representatives being trustees, perhaps there may be a doubt whether, on the death of a sole surviving executor intestate, the legal estate passes to his administrator (C. A., 1881, s. 30), or, as seems the better view, vests in the heir of the original testator, subject to be divested on the appointment of an administrator *de bonis non*, or by a vesting order.

Disclaimer.

A person who has proved a will cannot afterwards disclaim the trusts of the will: Wms. Exors., 9th ed., p. 1691; as to renunciation, see *Re Stevens*, 1897, 1 Ch. 422.

Married woman.

A married woman may be a personal representative, but her appointment is not advisable, inasmuch as, being a trustee under this sub-section, it is doubtful whether she can assent to a devise without the concurrence of her husband: *Harkness and Allsopp's Contract*, 1896, 2 Ch. 358.

Rights of heir-at-law preserved by implication.

This sub-section does not expressly preserve the beneficial right of the heir-at-law; moreover, the devolution of personal estate to the next of kin is an "incident" of personal estate which would seem to be applied to real estate by sub-s. (3), *infra*; but the expression "persons by law beneficially entitled" must be read with sub-s. (4) and s. 3 (1), *infra*, and clearly has reference to the

heir-at-law, and not to the next of kin, so as to preserve the rights of the heir.

S. 2 (1, 2).

REAL REPRESENTATIVE.

Right to require transfer.

An executor has a year before he can be compelled to assent to a specific bequest of chattels real, but the assent, when given, relates back to the death of the testator, so that the specific legatee is entitled to the rents and profits (if any) as from the death (*Good-eve's Personal Property*, 2nd ed., p. 394; *Wms. Exors.*, 9th ed., 1232). This, therefore, will now, it seems, be the law as regards real estate within s. 1. If an executor refuses his assent without proper cause he may be compelled in equity to give it: *ib.* 1227.

It would probably have been better if the sub-section had been omitted, and some express saving of the rights of the heir-at-law, and of testators to dispose of the beneficial interest in their real estate, been inserted in its place.

Sub-section should have been omitted.

(2.) All enactments and rules of law relating to the effect of probate or letters of administration as respects chattels real, and as respects the dealing with chattels real before probate or administration, and as respects the payment of costs of administration and other matters in relation to the administration of personal estate, and the powers, rights, duties, and liabilities of personal representatives in respect of personal estate, shall apply to real estate so far as the same are applicable, as if that real estate were a chattel real vesting in them or him, save that it shall not be lawful for some or one only of several joint personal representatives, without the authority of the Court, to sell or transfer real estate.

See *L. T. R.*, 1898, rr. 128, 129, 172.

As to the jurisdiction of the Court, see sub-s. 4, *infra*, and Rule thereunder.

Jurisdiction of the Court.

This section enables the personal representatives of a deceased person to sell or mortgage (*Wms. Exors.*, 9th ed., p. 802; *Cruikshank v. Duffin*, 13 Eq. 555; *Thorne v. Thorne*, 1893, 3 Ch. 196) his real estate for the purposes of administration by title paramount to the title of all persons beneficially claiming under the will or on the intestacy of the deceased.

Paramount power of sale or mortgage over real estate now vested in personal representatives.

As in the case of executors selling or mortgaging leaseholds, so under this section a purchaser or mortgagee in good faith of "real estate" (within s. 1) will not be concerned to inquire whether a sale or mortgage is necessary for the purposes of administration or not; nor, it seems, is there any limit of time during which a sale can be made, provided the representatives have not extinguished

Purchaser need not inquire into necessity for sale.

- S. 2 (2, 3). (Goodeve's P. P., 2nd ed., p. 335; Wms. Exors., 9th ed., 249).
REAL REPRESENTATIVE. Thus he may sell under the paramount power conferred by this section; or execute a conveyance or declaration of trust in favour of the beneficiaries under the will; or assent to a specific devise; but if his acts are relied on as matters of title, a subsequent probate must be shown: *ib.*, 251.
- An executor can maintain and carry through actions founded on his actual possession of the subject-matter of the action before probate, but no other actions (*ib.*, 253); and persons deriving title under him are in the same position (*ib.*, 254); he may also commence an action and continue proceedings until production of probate is required, and it is sufficient if he obtains the probate in time: *ib.*, 255; and see *Re Masonic and General Life Assurance Company*, 32 Ch. D. 373.
- Title of administrator derived from the grant.** An administrator has, of course, no title until the grant (Shep. Touch. 7th ed. 474; *Mitchell v. Holmes*, 8 Ex. 119); nor does the grant relate back, except where the act is for the benefit of the estate (*Morgan v. Thomas*, 8 Ex. 302; and see (where a solicitor did not get his costs) *Re Watson*, 19 Q. B. D. 234); and an agreement made before the grant is not enforceable against him: *Doe d. Hornby v. Glenn*, 1 A. & E. 49.
- Effect of order for administration registered as a *lis pendens*.** The powers of a representative under this section will, it seems, be taken away by an order for administration which has been registered as a *lis pendens*, whether an injunction or a receiver has been obtained or not (*Wigram v. Buckley*, 1894, 3 Ch. 483, 493); but, in the case of registered land where the representatives are registered, the order must be protected by an inhibition, caution or other entry to affect a purchaser.
- Will of real estate must be proved.** Where a testator dies after 1897, the title of his devisee will depend on the probate; for though the executor may assent to the devise before probate, nevertheless the right to give the assent will be best evidenced by the probate; hence a purchaser will, in all cases, insist on probate being taken out.
- Power to lease real estate.** Personal representatives may sub-demise their testators' chattels real, but the underlessee takes subject to the question whether an underlease is the best mode of administering the assets (Wms. Exors., 9th ed. p. 808), and an option to purchase in such a lease is bad (*Oceanic Steam, &c. Co. v. Sutherland*, 16 Ch. D. 236); this section, therefore, confers the like power to lease real estate.
- Power to charge registered land.** Where the personal representatives have been registered as proprietors, they may (L. T. A., 1875, s. 22), in favour of a chargee, encumber the land, subject to any restriction to the contrary, by means of a registered charge; but where they have not been registered they can only effect a charge subject to the prescribed conditions: s. 9 (6), *infra*.

(3.) In the administration of the assets of a person dying after the commencement of this Act, his real estate

shall be administered in the same manner, subject to the same liabilities for debt, costs, and expenses, and with the same incidents, as if it were personal estate; provided that nothing herein contained shall alter or affect the order in which real and personal assets respectively are now applicable in or towards the payment of funeral and testamentary expenses, debts, or legacies, or the liability of real estate to be charged with the payment of legacies.

S. 2 (3).

REAL REPRESENTATIVE.

This sub-section makes real estate legal assets, thereby throwing open nearly every class of assets to the preferential claims of creditors entitled thereto: Wms. Exors., 9th ed. pp. 850, 1546. Now, however, that specialty and simple contract debts are on the same footing (The Administration of Estates Act, 1869), this amendment of the law, though in the wrong direction, is not far-reaching: and see *Re Bentinck*, 1897, 1 Ch. 673. Legal assets.

The sub-section, it is conceived, meets the decision in *Re Shaw*, 1894, 3 Ch. 615, so that the Court may now, in a probate action, order costs to be paid out of real estate: and see *Re Prince*, 1898, 2 Ch. 225. Costs of probate action out of real estate.

The Act has no operation, it is conceived, to charge legacies on the residuary real estate. The sub-section expressly refers to liabilities for debts, costs and expenses, and if the Legislature had intended to create a new class of assets for payment of legacies, it is inconceivable that this would have been left to be effected by the word "incidents." Legacies not charged on real estate, query.

Moreover, the sub-section provides that nothing in the Act is to alter "the liability of real estate to be charged with the payment of legacies."

Now legacies before the Act do not constitute a charge on real estate; that is, "the liability of real estate to be charged with the payment of legacies" is *nil*; the proviso may be read, therefore, as preserving the non-liability of real estate to be charged with the payment of legacies.

However, taking the proviso in the sub-section literally, there can be no doubt that it merely expresses the right of a testator to charge his real estate in exoneration or in aid of his personal estate, and the difficulty lies in finding another construction for it: and see s. 4, *infra*.

Real estate being made legal assets by the Act, it is conceived that an executor will now have a right of retainer thereout. Executor's right of retainer.

The executor's right of retainer was described by Malins, V.-C., as "a relic of old law not founded on justice and working the greatest possible injustice" (*Crowder v. Stewart*, 16 Ch. D. 368, at p. 369), but he thought that the right had been extended by Hinde Palmer's Act (32 & 33 Vict. c. 46), so as to enable an executor to

S. 2 (3, 4).
REAL REPRESENTATIVE.

retain a simple contract debt against a specialty creditor; the contrary, however, is law: *Wilson v. Coxwell*, 23 Ch. D. 764. Nevertheless, Hinde Palmer's Act did extend the right of retainer, inasmuch as it gave the executor a right against a larger fund, for before the Act an executor who was a simple contract creditor could only retain his debt after the specialty creditors had been paid in full; but since the Act, it is held that the estate must first be divided in proportion to the debts of all the creditors, then the specialty creditors must be paid their dividend, and afterwards the executor may exercise his right of retainer against the dividend available for simple contract creditors: *ib.*, and *Re Jones*, 31 Ch. D. 440; as to retainer in specie, see *Re Gilbert*, 1898, 1 Q. B. 282.

Thus, in spite of judicial reluctance to extend the right of retainer, it seems impossible to resist the conclusion that the right is extended by the L. T. A., 1897; the ground for the right, namely, that an executor cannot sue himself, now arises under the L. T. A., 1897, in the case of real estate.

An administrator has the like right of retainer as an executor: *Wms. Exors.*, 9th ed. p. 884.

See, generally, as to the right of retainer, *ib.*, pp. 884—895.

Order in which real and personal estate are applicable in administration.

For the order in which real and personal assets are applicable in or towards the payment of funeral and testamentary expenses, debts, or legacies, see *Jarman Wills*, vol. ii., 5th ed., p. 1430; *Seton*, 5th ed., 1406—1408.

(4.) Where a person dies possessed of real estate, the Court shall, in granting letters of administration, have regard to the rights and interests of persons interested in his real estate, and his heir-at-law, if not one of the next of kin, shall be equally entitled to the grant with the next of kin, and provision shall be made by Rules of Court for adapting the procedure and practice in the grant of letters of administration to the case of real estate.

Separate grants.

Letters of administration with the will annexed.

Persons entitled to grant in case of personal estate.

Notice to next-of-kin when necessary.

It is conceived that separate grants to the heir-at-law and statutory next of kin cannot be made under this sub-section.

This sub-section will apply to letters of administration with the will annexed.

As to the persons entitled to the grant in the case of personal estate, see *Wms. Exors.*, 9th ed., pp. 346 *et seq.*

Where the title of the heir-at-law is clear, and there is no personality, a grant may be made to him without notice to the next of kin; but where his title is doubtful, or the amount of the personality large as compared with the realty, notice should be given to the next of kin: *In the goods of Barnett*, 1898, P. 145.

This sub-section does not mention the husband, and it seems that he may be passed over in a proper case, and administration granted to the heir (*In the goods of Ardern*, 1898, P. 147); his right to administration is not, however, taken away by the M. W. P. A., 1882: see *Re Lambert's Estate*, 39 Ch. D. 626.

SS. 2(4), 3(1).
REAL REPRESENTATIVE.

When administration is granted to a creditor, he is required to contract out of his right of retainer: *In the goods of Brackenbury*, 2 P. D. 272.

Husband may be passed over in a proper case. Right of retainer.

The following Rule, dated November 20th, 1897, has been made in pursuance of this sub-section:—

“All rules, orders, and instructions, and the existing practice of the Court with respect to non-contentious business shall, so far as the circumstances of each case will allow, be applicable to grants of probate and administration made under the authority of the Land Transfer Act, 1897.”

Additional rule for probate registries.

The number of this Rule for the Principal Registry is 109; and for the District Registries 103.

The rule refers to grants of probate, as well as to grants of administration, but the sub-section refers to the latter only.

Grants *ad colligendum* are by this sub-section, and the above rule, made applicable to real estate: *In the goods of Roberts*, 1898, P. 149.

Grants *ad colligendum*.

Where an applicant for administration is not one of the next of kin, the heir-at-law has priority, and until he has been cited, a general grant will not be made: *ib.* But a grant *ad colligendum* may be made with special power, to deal with the real estate, till the heir-at-law can be cited: *ib.*; and see, Wms. Exors., 9th ed., p. 377.

Application for administration not one of next of kin.

3.—(1.) At any time after the death of the owner of any land, his personal representatives may assent to any devise contained in his will, or may convey the land to any person entitled thereto as heir, devisee, or otherwise, and may make the assent or conveyance, either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge; and on such assent or conveyance, subject to a charge for all moneys (if any) which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as

Provision for transfer to heir or devisee.

S. 3 (1). REAL REPRESENTATIVE.	to any acts done or contracts entered into by them before such assent or conveyance.
Assent may be verbal or implied.	See note to s. 2 (2), <i>supra</i>; "Powers of sale, how extinguished," also L. T. R., 1898, r. 173. For definition of "land," see s. 24 (1), <i>infra</i>. An assent to a devise may be verbal, or implied. This is a very grave defect, as a purchaser from the devisee must have evidence in writing, of the assent to complete his title: and see, <i>Re Culverhouse</i>, 1896, 2 Ch. 251. Moreover, having regard to the power to create incumbrances, it seems that the heir or devisee should require a covenant for title. Provision might well have been made for enabling a conveyance, having the effect of an assent to be made free from any stamp duty.
Assent passes legal estate.	An assent is effectual to pass the legal estate, but in most cases it will be advisable to take a conveyance.
Residuary (or general) devise.	An assent may be made to a residuary devise in whole or in part: <i>Austin v. Beddoe</i>, 41 W. R. 620; see, however, <i>Elliott v. E.</i>, 9 M. & W. 23, 26; but in practice, it ought at least to be in writing. An assent or conveyance seems to be necessary, even where the representative is himself beneficially entitled: Wms. Exors., 9th ed., p. 1233.
Orders to convey.	In the case of intestacy, where there is any doubt as to the heirship, the representatives should refuse to convey, except pursuant to an order obtained under sub-s. 2, <i>infra</i>.
Duty of representative to convey to proper person.	This section does not relieve the administrator from responsibility in case he conveys to the wrong person. In the case of small sales, a condition, making his conveyance conclusive proof that the grantee was the heir or proper person, may be inserted, and it is conceived would not be deterrent.
"Or otherwise."	The words "or otherwise" seem to show that the representatives may convey as directed by, or to a person deriving title under, the heir or devisee, and perhaps show that leaseholds (s. 24 (1)) may be conveyed to a legatee subject to a general charge. A conveyance to a devisee should disclose the devise, and a purchaser or mortgagee must see that the conveyance is made to the proper person.
Meaning of land.	As to the meaning of "land," see s. 24 (1), <i>infra</i> , and note thereto.
Presumed or conditional assent.	An assent may, it is conceived, be presumed in certain cases, or may be made conditionally: Wms. Exors., 9th ed. p. 1230.
All real representatives must join in an assent.	All the representatives must join in an assent, except under an order of the Court: s. 2 (2), <i>supra</i> .
When assent may be given. Assent to life estate.	An assent can only be given to a devise, a conveyance or transfer will be required in all other cases. The assent to a devise for life will operate also as an assent to a gift in remainder: <i>Stevenson v. Mayor of Liverpool</i>, L. R. 10 Q. B. 81.
Land devised in settlement.	Where land is devised in settlement, the devise does not take

effect until the representative has assented to the devise: and see notes to s. 1, *supra*, as to S. L. A. powers.

The power to assent or convey, "subject to a charge for the payment of any money, which the personal representatives are liable to pay," will enable the representatives to assent or convey, without any indemnity against contingent liabilities, and also to let a devisee or heir into possession before administration is completed. Where the assent or conveyance follows the words of this section, the representatives obtain a statutory indemnity. The effect of the assent or conveyance will be to vest the land in the devisee or heir, subject to a general charge; if the land is subsequently required for the purposes of administration, either the concurrence of the devisee or heir, or an application to the Court will be required to raise money by sale or mortgage, hence the assent or conveyance ought not to be made, unless there is reason to suppose that resort to the land will not be had: see *Whittaker v. Kershaw*, 45 Ch. D. 320.

According to the early authorities (see, e.g., *Lloyd v. Baldwin*, 1 Ves. sen. 173; *Bailey v. Ekins*, 7 Ves. 318, 322; *Eland v. E.*, 4 My. & Cr. 420, 427; *Colyer v. Finch*, 5 H. L. C. 905, 922, 923), it seems a conveyance for value from the devisee would have displaced a general charge of debts in favour of a purchaser, but now it may be doubted whether this is so unless the devisee is also the executor: *Corser v. Cartwright*, L. R., 7 H. L. 731, 737; *West of England, &c. Bank v. Murch*, 23 Ch. D. 138, 151, 152. However, it seems that the devisee, after an assent subject to a general charge, would be the person who ought to hold the assets impressed with the liability to satisfy debts, and so can sell free from them (see *Corser v. Cartwright*, *ubi supra*, at p. 740), for the liability of the executor is to cease. If this is not so, the title of the heir or devisee will be stamped with this general charge, which will be an unnecessary hardship.

Where, however, an assent is made subject to legacies or to specified charges, a purchaser must see to the application of the purchase money: *Lloyd v. Baldwin*, 1 Ves. sen. 173.

An assent relates back to the death of the testator, so as to confirm the acts of the devisee (*Saunders' Case*, 5 Rep. 12a, p. 22); there is nothing, however, in this section to give the same retrospective effect to a conveyance to the heir or devisee.

A legatee cannot, however, maintain an action at law, until the assent has been given: *Elliott v. Elliott*, 9 M. & W. 23, 26.

As to assents by married women, see s. 2 (1), *supra*, and note.

It may be doubted, whether the cases relative to an assent to a bequest are altogether applicable to this statutory power to assent, e.g., as to premature assents (*Spode v. Smith*, 3 Russ. 511); at any rate, the power to assent, subject to a general charge, is new.

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"Subject to a charge for the payment of any money which the personal representatives are liable to pay."

Assent relates back, but query as to conveyance.

Query how far cases on assent are applicable to the statutory power.

S. 3 (2, 3, 4).

REAL REPRESENTATIVE.

Application, how made.
Real representative may be ordered to pay costs if he wrongfully refuses to convey.
Vesting order.

Personal representatives and beneficiaries should not be jointly registered.

Fees on transfers not for value.

Registration pursuant to an assent.

(2.) At any time after the expiration of one year from the death of the owner of any land, if his personal representatives have failed on the request of the person entitled to the land to convey the land to that person, the Court may, if it thinks fit, on the application of that person, and after notice to the personal representatives, order that the conveyance be made, or, in the case of registered land, that the person so entitled be registered as proprietor of the land, either solely or jointly with the personal representatives.

This section seems applicable to chattels real: *see* s. 24, *infra*.

It is conceived, that the application may be made by originating summons: R. S. C., Order LV., r. 3 (e).

The representative may possibly be ordered to pay the costs of the application, if he has wrongfully refused to convey: *Jones v. Lewis*, 1 Cox, 199; *Palairt v. Carew*, 32 Beav. 564.

As an alternative to ordering a conveyance under this section, the Court has power to make a vesting order, *see* T. A., 1893, s. 26.

The personal representatives can transfer, without being themselves registered: s. 9 (6), *infra*; L. T. R., 1898, r. 153; *see also, ib.*, r. 101.

It is difficult to see what good object could be attained by the registration of the beneficiaries, jointly with the personal representatives as such. If administration is completed, then the beneficiaries are entitled to be solely registered, if not, the powers of the representatives ought not to be fettered.

(3.) Where the personal representatives of a deceased person are registered as proprietors of land on his death, a fee shall not be chargeable on any transfer of the land by them unless the transfer is for valuable consideration.

For cases where the representatives are not to be registered, *see* L. T. R., 1898, rr. 137, 138.

The "fee" in this sub-section relates only to Land Registry Charges: *see* Fee Order 1898, Chap. V., *infra*.

(4.) The production of an assent in the prescribed form by the personal representatives of a deceased proprietor of registered land shall authorise the registrar to register the person named in the assent as proprietor of the land.

For prescribed form of assent, *see* L. T. R., 1898, r. 130, Form 46.

Probate or letters of administration, with the will annexed, must be produced: *ib.*, r. 130; *see*, also, L. T. A., 1875, s. 41.

The registrar must act on a transfer, by the personal representatives to the heir, without proof of heirship (*ib.*, ss. 29 and 34); and the representatives need not be themselves registered: s. 9 (6), *infra*. As to the estate of the heir, when registered, *see* L. T. A., 1875, ss. 33, 38, 46.

Where a settlement arises on the death of a registered proprietor, s. 6 (5), *infra*, applies.

SS. 3 (4), 4 (1).

REAL REPRESENTATIVE.

Registration of heir-at-law.

4.—(1.) The personal representatives of a deceased person may, in the absence of any express provision to the contrary contained in the will of such deceased person, with the consent of the person entitled to any legacy given by the deceased person or to a share in his residuary estate, or, if the person entitled is a lunatic or an infant, with the consent of his committee, trustee, or guardian, appropriate any part of the residuary estate of the deceased in or towards satisfaction of that legacy or share, and may for that purpose value in accordance with the prescribed provisions the whole or any part of the property of the deceased person in such manner as they think fit. Provided that before any such appropriation is effectual, notice of such intended appropriation shall be given to all persons interested in the residuary estate, any of whom may thereupon within the prescribed time apply to the Court, and such valuation and appropriation shall be conclusive save as otherwise directed by the Court.

Appropriation of land in satisfaction of legacy or share in estate.

The Rules of Court under this section remain to be made.

For an instrument of appropriation, *see* L. T. R., 1898, r. 130, Form 47.

The section is not applicable in cases of intestacy: *see* L. T. R., 1898, r. 130.

The notice to be given under this sub-section becomes part of the title to the appropriated land, so that a subsequent purchaser of unregistered land must see that it has been duly given. It is conceived, that great difficulty will arise in proving that the proper notice has been served.

Notice part of the title.

This sub-section seems only to contemplate the case of the residuary estate being immediately distributable.

Where the residuary estate is settled upon trust for several persons and their families, the trustees have power *virtute officii*, to

Powers of appropriation under general law.

S. 4 (1, 2). appropriate specific authorised investments, to any of the settled shares: *Re Nickels*, 1898, 1 Ch. 630; *Re Richardson*, 1896, 1 Ch. 512; *Re Brooks*, 76 L. T. 771.

REAL REPRESENTATIVE.

Where the residuary estate is immediately divisible, then before this Act, an executor had power to appropriate, with the consent of the person entitled to a legacy or share: *Re Lepine*, 1892, 1 Ch. 210.

It may be doubted whether notice, in accordance with this sub-section, is not now rendered necessary in such a case.

As to whether legacies are, by the Act, charged on the residuary real estate, see note to s. 2 (2), *supra*; this section seems to lend some colour to the view that legacies are so charged.

As to notes of death duties being entered on the register, after an appropriation, see L. T. R., 1898, r. 173.

Whether legacies charged on real estate.

Appeal to the Court by residuary devisees.

The right to appeal against the appropriation and valuation, will enable the residuary devisees to prevent the personal representatives from appropriating land, charged with legacies in aid of the personal estate, where there is sufficient personal estate, and also to contest any unfair valuation of the land.

Express power should be inserted in wills.

An express power of appropriation should, having regard to the defects in the statutory power, be inserted in wills: *cf.* Conv. Bill, 1898, c. 16 in Appendix.

(2.) Where any property is so appropriated a conveyance thereof by the personal representatives to the person to whom it is appropriated shall not, by reason only that the property so conveyed is accepted by the person to whom it is conveyed in or towards the satisfaction of a legacy or a share in residuary estate, be liable to any higher stamp duty than that payable on a transfer of personal property for a like purpose.

Effect of sub-section, *nil*.
Stamp duty in cases of appropriation.

The effect of this sub-section seems to be *nil*.

Where a legacy, say, of 1,000*l.* is given by a will which does not contain any express power to appropriate, then if the legatee agrees with the executor to accept a specific portion of the estate in discharge of the legacy, this amounts to a sale, and *ad valorem* duty is payable: *Re Lepine*, 1892, 1 Ch. 210; Stamp Act, 1891, ss. 54, 57, 62, and Schedule.

Where, however, the will contains a power for the executor to appropriate, then it is submitted that the legacy is equivalent to 1,000*l.*, or such portion of the estate of corresponding value as the executor may select, so that no *ad valorem* duty would be payable.

This section, it seems, must have effect as if the power of appropriation were conferred by the will, hence where real estate is conveyed to answer a pecuniary legacy, a 10s. deed stamp should be sufficient, though it will be advisable to have the stamp adjudicated.

SS. 4 (2, 3),
5, 6 (1).

REAL REPRESENTATIVE.

(3.) In the case of registered land, the production of the prescribed evidence of an appropriation under this section shall authorise the registrar to register the person to whom the property is appropriated as proprietor of the land.

The prescribed evidence is probate or letters of administration with the will annexed (L. T. R., 1898, r. 130); for the instrument of appropriation, *see ib.*, Form 47. Evidence of appropriation.

5. Nothing in this part of this Act shall affect any duty payable in respect of real estate or impose on real estate any other duty than is now payable in respect thereof. Liability for duty.

As to a sale by personal representatives discharging the land from estate and succession duty, *see* note to s. 2 (2), *supra*.

As to death duties in the case of registered land, *see* L. T. A., s. 18, and s. 13, *infra*; L. T. R., 1898, rr. 171—174.

This section preserves the liability of real estate or the proceeds to duty, but not, it is conceived, the charge under Finance Act, 1894, s. 9 (1).

PART II.

Amendments of the Land Transfer Acts, 1875.

6.—(1.) Settled land may (at the option of the tenant for life) be registered either in the name of the tenant for life, or, where there are trustees with powers of sale, in the names of those trustees, or, where there is an overriding power of appointment of the fee simple, in the names of the persons in whom that power is vested. Settled land.

As to registration of settled land, *see* L. T. R., 1898, rr. 68—72, *infra*; and compare L. T. A., 1875, s. 68.

"At the option of the tenant for life" (*see*, also, L. T. R., 1898, r. 82, and note); this option cannot be exercised unless there are a tenant for life, and one of the two last-named cases in the section. Option of tenant for life.
(*Hatten v. Russell*, 38 Ch. D. 334, 345); it is, however (*see* L. T. R.,

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1898, rr. 68, 82), clear that the tenant for life may be registered, though whether he would be right, or well advised as a rule, in permitting any other person to be registered may be questioned: see S. L. A., 1882, ss. 50, 51, 53; and L. T. R., 1898, r. 81, notes as to Forms 16, 17, 21, 22, and r. 82.

The option is exerciseable from time to time (Interpretation Act, 1889, s. 32 (1)); the decision in *Cookes v. Cookes*, 34 Ch. D. 498, was made before the commencement of that Act.

Over-riding
power of
appointment.

An over-riding power of appointment of the fee simple is no fetter on the statutory powers of a tenant for life, since, if he exercises his power to convey (S. L. A., 1882, s. 20) before the power of appointment is exercised, the purchaser obtains a good title, and the over-riding power is transferred to the capital money arising on the sale: Sugden Powers, 8th ed., pp. 482, 483; S. L. A., 1882, s. 22 (5).

The power
must be in
respect of the
fee-simple.

There seems to be no power under this sub-section to register in the names of the persons who have an over-riding power of any estate less than the fee simple; e.g., where the settled land consists of leaseholds: and see L. T. R., 1898, r. 68, and note to r. 71 on Form 17.

Trustees with
power of sale.

Registration of settled land in the names of trustees appears to be confined to trustees who have an express present power of sale (e.g., trustees within S. L. A., 1890, s. 16, are not trustees with a present power of sale), and they are not in other respects by any means co-extensive with "trustees of the settlement" as defined by sub-s. (10), *infra*; for instance, trustees appointed under S. L. A., 1882, s. 38, of a settlement not containing a power of sale would not have "powers of sale" except on behalf of an infant under s. 60.

In settlements made after 1882, trustees are not usually given express powers of sale, but are merely declared to be trustees for the purposes of the S. L. A., 1882—1890. The option, therefore, given by this sub-section is considerably restricted: and see notes to L. T. R., 1898, rr. 71, 81.

The expressions "tenant for life" and "settled land" have the same meaning as in the S. L. A., 1882—1890: sub-s. (10), *infra*.

Meaning of
"tenant for
life" in this
section.

1. Tenant for life proper.
2. Limited owners.

Under the S. L. A., 1882, s. 2 (5), (6), (7), a person who is entitled either for a legal or equitable estate for life in possession, whether subject or not to incumbrances, is a "tenant for life"; and joint tenants or tenants in common so entitled concurrently constitute the "tenant for life."

By S. L. A., 1882, s. 58, the limited owners there defined are given the powers of a tenant for life.

Though the S. L. A. distinguishes between a "tenant for life" and a "person having the powers of a tenant for life" (see ss. 10 (2), 60, 61 (2), 62), it seems clear that these limited owners are within

this section: *see*, Forms 16—20 in First Schedule to L. T. R., 1898; and *cf.* sub-s. (5), *infra*.

Under S. L. A., 1882, s. 59, an infant seised in fee is to be “deemed a tenant for life”; such a person, then, is (*see* sub-s. (5), *infra*) within this section; as to when it is desirable for the personal representatives of the deceased ancestor or testator, or for the persons having the statutory powers under S. L. A., 1882, s. 60, to be registered in place of the infant, *see* note to L. T. R., 1898, r. 71; also next note.

Under S. L. A., 1882, s. 60, the powers may be exercised on behalf of an infant (who is or is deemed a tenant for life, or would if he were of age have the powers of a tenant for life) by the S. L. A. trustees, or, if none, by the persons appointed by the Court into which capital money must then be paid: *Re Dudley*, 35 Ch. D. 338. These trustees or other persons are within this section for the same reason that the “limited owners” (*see* note, *supra*) are.

Where, under S. L. A., 1882, s. 60, the Court appoints persons to convey for the purposes only of a particular transaction, they should not be registered, but either the personal representatives of the deceased ancestor or testator (where the infant takes as heir or devisee) or the infant should be registered, and the representatives or the guardian (L. T. A., 1875, s. 88), according as they or the infant are registered, must give effect to the transactions of the persons appointed under s. 60: and *see* L. T. R., 1898, r. 101.

By the S. L. A., 1882, s. 61, a married woman, or a married woman and her husband, as the case may require, have “the powers of a tenant for life,” and for the same reason that “limited owners” (*see* note, *supra*) are within this section, she, or she and her husband, as the case may be, constitute a “tenant for life” within this section. On registration the restraint on anticipation, if any, may be disregarded: S. L. A., 1882, s. 61 (6).

By the S. L. A., 1882, s. 62, the committee of the estate of a lunatic so found who is a tenant for life, or has the powers of a tenant for life, may exercise the powers on his behalf and in his name. The lunatic will, of course, be registered, and the committee will execute any necessary instruments in the name of the lunatic; this constitutes a wide difference between persons who have the statutory powers under s. 60, for the powers are not vested in the committee, but in the lunatic.

Where, under S. L. A., 1884, s. 7, the Court has given to the person “deemed to be a tenant for life” under S. L. A., 1882, s. 63, general leave to exercise the S. L. A. powers or leave to exercise the power of sale, there can be little doubt that he is a “tenant for life” within this section: *see* note, “Limited Owners,” *supra*. It is conceived that he is not a “tenant for life” within this

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3. Infant
seised in
fee simple.

4. Trustees or
other persons
having power
to act on
behalf of an
infant seised
in fee or
infant tenant
for life.

5. Married
women.

6. Lunatics
so found.

7. Tenant for
life of pro-
ceeds of sale
who has leave
to exercise the
statutory
power of sale.

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LAND.**

section till such an order is made, because, first, he cannot exercise the powers of a tenant for life (S. L. A., 1884, s. 7 (i)); secondly, L. T. A., 1875, s. 68, shows that the persons holding land on trust for sale are *prima facie* the right persons to be registered; and, thirdly, no form of restriction (*see*, however, Form 9) is prescribed to meet the case in question, while Form 8 fits in with the case of trustees for sale being registered where the disposition on trust requires some person (*e.g.*, the tenant for life of the proceeds) to consent to the sale: S. L. A., 1884, s. 6 (1). It may be objected that if an infant seised in fee (S. L. A., 1882, s. 59) is a tenant for life within this section, then by parity of reasoning a tenant for life of land held on trust for sale (S. L. A., 1882, s. 63) is also; for both are "deemed to be" tenants for life; it is not, however necessary, to enable him to be registered, to say that an infant seised in fee is a tenant for life for the purposes of this section, though it seems that he is: *see* sub-s. (5).

Meaning of
"settled
land" in this
section.

As to the meaning of "settled land" in this section (*see* S. L. A., 1882, ss. 2 (3), 59, 63), the meaning must correspond to that attributed to "tenant for life" (*see supra*); hence will not include land held on trust for sale (s. 63) unless a sufficient order has been made under S. L. A., 1884, s. 7. Settled copyholds must not, however, be registered: L. T. A., 1875, s. 2.

Registration
of "settled
land" under
L. T. A.,
1875, s. 68.

It may be questioned whether "settled land" could properly have been registered, under L. T. A., 1875, s. 68, in the name of the tenant for life, for that Act gave no express power to vest the statutory fee simple in him: *see*, now, sub-s. (8), *infra*.

Consent to
registration of
settled land.

As to the consent required before settled land may be registered, *see* L. T. R., 1898, r. 68, and notes; no notice of a general intention to sell (S. L. A., 1882, s. 45) will be required before registration.

Registration
of tenant for
life of lease-
holds.

As to its being proper for the tenant for life to be registered as proprietor of leaseholds held on trusts corresponding to the uses, *see* notes to L. T. R., 1898, r. 71.

Cases where
there is no
power to sell
under

For a form of inhibition where land is for the time being inalienable, *see* L. T. R., 1898, Form 9.

S. L. A.
1. Married
woman
entitled in fee
without
power of
anticipation.

Where a married woman is entitled in fee for her separate use without power of anticipation, no settlement arises by reason of her husband having a contingent estate by the curtesy (*Bates v. Kesterton*, 1896, 1 Ch. 159); she has, therefore, no power to sell under the S. L. As., and an order under C. A., 1881, s. 39, is requisite (it is proposed to alter this: *see* Conv. Bill, Appendix, *infra*); and *see Re Pocock and Pranker's Contract*, 1896, 1 Ch. 302, where the case of a married woman entitled for life for her separate use without power of anticipation under a trust for payment of income (*see* S. L. A., 1882, s. 58 (1) (ix), (2)), with remainder as she should appoint by will, and in default to her in fee, is distinguished.

A discretionary trust to pay rents during the life of A. for the benefit of A., his wife and children, where there are no children, does not make A. and his wife a compound tenant for life: *Re Atkinson*, 30 Ch. D. 605; 31 *ib.* 577. Therefore, unless the trustees hold on trust for sale or have a power of sale, no sale can be made during A.'s life except, perhaps, under an order of the Court.

Where there is no power for a sole trustee to sell (*see Garnett Orme and Hargreaves' Contract*, 25 Ch. D. 595) in a settlement executed after 23 & 24 Vict. c. 145, or where there is no express or implied power for a surviving or sole trustee to give a receipt (T. A., 1893, ss. 20, 22), then, if there is only one trustee of the settlement, another or others should be appointed before a sale by a tenant for life is completed: S. L. A., 1882, s. 39.

Where land inalienably entailed by Act of Parliament is purchased with money provided by Parliament in consideration of public services, there is no power to sell it (S. L. A., 1882, s. 58 (1) (i); Wolst. B. & C., 7th ed. pp. 369, 370); hence, in this case, there can be no object in placing it on the register.

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2. Discretionary trusts.

3. Insufficient number of S. L. A. trustees to whom capital money is to be paid.

4. Inalienable entails created for public services.

(2.) There shall also be entered on the register such restrictions or inhibitions as may be prescribed, or may be expedient, for the protection of the rights of the persons beneficially interested in the land.

As to the principles on which restrictions and inhibitions are to be framed for the protection of settled land, *see* L. T. R., 1898, r. 70, and note thereto.

For forms, *see ib.*, First Schedule, Forms 6—10; and *see* r. 71 for notes on these forms; also note to sub-s. 8, *infra*, for form protecting beneficiaries from the tenant for life's power to create mortgages by deposit. These forms should be used whether the settlement was created before or after first registration, and whether the title registered is possessory or absolute.

Rights and interests which are not capable of being overreached by an exercise of the powers conferred by S. L. A., 1882, s. 20, will be protected by entries in the Charges Register, except where the title registered is possessory, and even in this case they may, and in most cases will, be so entered: L. T. R., 1898, rr. 18, 23.

Rights and interests which are capable of being overreached under S. L. A., 1882, s. 20, should be protected by restrictions and inhibitions, notwithstanding that the title registered is possessory.

Where the settlement is created prior to first registration of the land with a possessory title, then (notwithstanding that the proper restrictions have been entered and the instrument of transfer is executed under seal, Form 14), unless the registrar permits the

Principles on which inhibitions and restrictions are framed.

Forms of inhibitions and restrictions.

What rights protected by entries in Charges Register.

Cases where conveyance under S. L. A. will be required off the register.

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instrument of transfer to be executed in the form of a conveyance under the S. L. As., it will be necessary for the tenant for life to execute a conveyance under S. L. A., 1882, s. 20, off the register (L. T. A., 1875, s. 49), in addition to the instrument of transfer; for the successive estates of the remaindermen and the family charges created by the settlement are all paramount to the fee simple conferred by first registration (L. T. A., 1875, s. 8), and are not defeated by a transfer for value: L. T. A., 1875, s. 32.

Whether the registrar permits such alteration in the instrument of transfer or not, it will be better to take the conveyance which displaces the paramount interests separately, for the purchaser will require the custody of it (*see* s. 16, *infra*), and if it is included in the instrument of transfer it must be filed at the registry: L. T. R., 1898, r. 162. The separate conveyance will not involve additional stamp duty: r. 164.

See, also, note to L. T. R., 1898, r. 132.

(3.) Where land already registered is assured to the uses of a settlement, the instrument of transfer may be in a specially prescribed form, which shall operate as a conveyance to the uses of the settlement, and it shall be the duty of the trustees of the settlement (if any) to concur in the instrument, and to apply for the entry on the register of the proper restrictions or inhibitions under this section. If there are no such trustees, the registrar shall inquire into the terms of the settlement, and shall enter on the register such restrictions or inhibitions as may be prescribed, or as appear to him to be in accordance with this section.

As to meaning of "the trustees of the settlement" and of "the settlement," *see* sub-s. 10, *infra*, and notes.

As to prescribed restrictions, *see* notes to last sub-section and to L. T. R., 1898, r. 71.

As to inquiry into the terms of the settlement, compare L. T. R., 1898, rr. 132—135.

Forms of
transfer to
uses of a
settlement.

For forms of transfer to uses, *see* L. T. R., 1898, First Schedule, Forms 16—22; and for notes on these forms, which are somewhat defective, *see* r. 81. As to transfers of leaseholds on trusts corresponding to the uses, *see* notes to rr. 71 and 81.

It will not be necessary for the S. L. A. trustees to join where the transfer is to persons having a joint overriding power of appointment: *see* r. 81, note to Form 19; except where the purchase is made with capital money.

Where land is purchased with capital money, and conveyed to the uses of a settlement, the trustees join in the deed to pay the money by the direction of the tenant for life (S. L. A., 1882, ss. 22 (2) and 42); but this sub-section seems to render it necessary for them to join, even where the transfer is voluntary.

In most cases, where land is purchased with capital money, there will be trustees of the settlement in existence, since either the money is in their hands or in Court, and, if in Court, there must have been trustees when paid in (S. L. A., 1882, s. 22 (1): *Hatten v. Russell*, 38 Ch. D. 334, 345); except where a person is appointed to convey, under s. 60, on behalf of an infant: see *Re Dudley*, 35 Ch. D. 338.

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Trustees must join even where transfer to uses is voluntary. Must be trustees where there is a purchase.

(4.) On the death of a tenant for life, registered as proprietor of settled land, it shall be the duty of the trustees of the settlement (if any) to apply for the registration of his successor or successors, with such restrictions or inhibitions (if any) as may be in accordance with this section. If the trustees neglect to apply or if there are no such trustees, the registrar shall proceed under the forty-first section of the principal Act in such manner as may be prescribed.

This sub-section must be read with L. T. R., 1898, rr. 132—135: see notes on those Rules. The duty of applying ought to have been thrown on the successor, the trustees merely being served.

Even if the fee simple is vested in a tenant for life by registration before 1898 (see now sub-s. 8, *infra*), and devolves on his personal representatives on his death under s. 1 of this Act, his successor can be registered under this sub-section without the necessity of a transfer.

If, however, settled land is taken off the register under s. 17, *infra*, after the death of a tenant for life who was registered before 1898 (see sub-s. 8, *infra*), a conveyance by the personal representatives of the deceased tenant for life might be necessary to get in the legal estate.

Registration of remainder-man on death of tenant for life. No transfer to successor generally necessary.

(5.) Where a settlement is created by the will of, or otherwise arises in consequence of the death of, a sole registered proprietor of land or of an undivided share in land, it shall be the duty of his personal representatives to apply for the registration of the person entitled to be registered as proprietor, and for the entry on the register

S. 6 (5, 6, 7). of proper restrictions or inhibitions in accordance with this section.

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LAND.

Settlements
arising in
consequence
of a death.

See L. T. R., 1898, r. 131, and notes thereto. This section supplements s. 3, *supra*.

For the purposes of the S. L. A., 1882, the estate of a tenant by the curtesy is to be deemed an estate arising under a settlement made by his wife: S. L. A., 1884, s. 8.

Again, where an infant as heir-at-law becomes seised in fee there is a settlement "deemed to be existing" (S. L. A., 1882, s. 59; *Re Wells*, 31 W. R. 764; Seton, 5th ed. 1512); or where he becomes seised in fee under a will, then the will becomes the settlement for the purposes of the S. L. A.: *Re Simpson*, 1897, 1 Ch. 256.

The above-mentioned settlements therefore constitute settlements arising "in consequence of the death of a sole registered proprietor."

(6.) The settlement, or an abstract or copy thereof, may be filed in the registry for reference in the prescribed manner, but such filing shall not affect a purchaser or mortgagee for value from the registered proprietor with notice of its provisions, or entitle him to call for production of the settlement, or for any information or evidence as to its contents.

Notice to
purchasers.

As to notice, *see* L. T. A., 1875, s. 83 (1), as amended by the First Schedule, *infra*.

As to what documents will be retained in the registry, *see* L. T. R., 1898, r. 162.

Production of
title of first
registered
proprietor.

This sub-section does not affect the right of the purchaser or mortgagee to call for production of the settlement where he is entitled to production in respect of estates paramount to the fee simple conferred by first registration, nor prevent his being affected with notice where he is so entitled.

Filing of copy
of settlement.

No reference to the settlement will be made in the register (L. T. R., 1898, r. 72), a copy of which, whether consisting of one or more documents, should be filed: *ib*. As to meaning of "settlement," *see* sub-s. 10.

(7.) The registered proprietor of settled land and all other necessary parties (if any) shall, on the request, and at the expense, of any person entitled to an estate, interest, or charge conveyed or created for securing money actually

raised at the date of such request, charge the land in the prescribed manner with the payment of the money so raised.

S. 6 (7).

SETTLED
LAND.

The consents of persons whose assent is necessary to the registered disposition may now be given in the instrument of charge: L. T. R., 1898, r. 155.

Other neces-
sary parties.

As to the mode in which the priority of a term or power should be maintained when a charge is created under this sub-section for raising money under a subsequent term, see L. T. R., 1898, r. 117.

Manner of
preserving the
priority of
terms for
securing
family
charges.
Portions.

Portions will be raised in the same way as in the case of unregistered land, with the addition of a charge by the registered proprietor under this sub-section, with the proper modification of the implied covenant for payment: L. T. A., 1875, s. 23; L. T. R., 1898, rr. 106, 107, Form 39A.

Notice of a term created to secure family charges could, it is conceived, be entered up as a lease under L. T. A., 1875, s. 50, either where money is raised (S. L. A., 1882, s. 20; L. T. R., 1898, r. 70), or where the term is paramount to the settlement and cannot be overreached under S. L. A., 1882, s. 20, there being no trustees appointed by the Court of the "compound settlement": *Re Marquis of Ailesbury and Lord Iveagh*, 1893, 2 Ch. 345.

Notice of a
term when
money raised
or where it
cannot be dis-
placed under
the S. L. A.

Where money has been raised by mortgage of a term (e.g., created under C. A., 1881, s. 44) limited to secure pin money or a jointure, the mortgages will be entitled to a registered charge under this sub-section.

Jointures and
pin money.

Though an annuity can now be charged on registered land (L. T. A., 1897, s. 9 (3); L. T. R., 1898, r. 108, Form 40), yet pin money and jointures should be limited by the settlement as in the case of unregistered land, and should not appear on the register until money is actually raised. Even if the annuity were registered as a charge, it is conceived that it would not fetter the exercise by the tenant for life of his powers under the S. L. A., inasmuch as the registrar has power to enter satisfaction of the charge (L. T. A., 1875, s. 28; L. T. R., 1898, rr. 16, 101, 112, and 120), and the Court would, it is apprehended, where the S. L. A. powers have been properly exercised, compel the registrar, if he refused, to vacate the charge as regards so much of the land as was freed therefrom under the S. L. A. powers. The interests of persons having family charges on the settled land can be sufficiently protected by inhibitions and restrictions until money is actually raised.

Where a charge by way of annuity is registered, it seems that the annuitant cannot be restrained from anticipation (s. 9 (4), *infra*). It is conceived, however, that the effect can be obtained by an

Restraint on
anticipation
by married
woman in

S. 6 (7, 8). SETTLED LAND.
 ———
 respect of an annuity.
 Mortgages under S. L. A., 1882, ss. 5, 18; S. L. A., 1890, s. 11.

inhibition (*e.g.*, no transfer, sub-charge or lien by deposit is to be made or created during the present coverture of A. B.); no form, however, is provided, but *see* L. T. R., 1898, r. 147.

Money for enfranchisement, exchange or partition, under ss. 5 or 18 of the S. L. A., 1882, or to discharge an incumbrance under s. 11 of the S. L. A., 1890, will be raised as in the case of unregistered land with the addition of a registered charge (*see* note to L. T. R., 1898, r. 71); mortgages under s. 5 seem to come within this sub-section.

The charge under this sub-section is to be made at the cost of the chargee, hence the costs of the registered charge must be part of the sum advanced.

Position of mortgagee of remainderman.

Inasmuch as the estate of a remainderman is overreached by the statutory conveyance of a tenant for life, and a mortgagee of the estate in remainder is in the same position as the remainderman (*Wheelwright v. Walker*, 23 Ch. D. 752), a registered tenant for life must not charge the settled land in favour of such a mortgagee. It is conceived that in most cases notice to the trustees would be a sufficient protection to the mortgagee: *Re Wasdale*, W. N., 1898, 164 (2).

(8.) Subject to the maintenance of the right of the registered proprietor to deal by registered disposition, or by way of mortgage by deposit, with any land whereof he is registered as proprietor, the estates, rights, and interests of the persons for the time being entitled under any settlement comprising the land shall be unaffected by the registration of that proprietor.

See Chap. I. Part III. iii., for a discussion on mortgages by deposit.

Restriction on mortgage by deposit by tenant for life.

No form of restriction is prescribed by the L. T. R., 1898, against a mortgage by deposit of the certificate by a tenant for life: *see* s. 8, *infra*, last paragraph, and note thereto; also notes to L. T. R., 1898, rr. 70, 71.

It is suggested that at the end of the restriction in Form 6 should be added:—

“and no lien by deposit of the certificate is to be created without the like consent.”

This will not prevent the tenant for life from charging his life interest, and as an assignee of the life interest is not entitled to the deeds relating to the fee simple, there is no hardship in rendering

the land certificate useless in his hands; at any rate, it should not do more than create a lien on the life interest.

If the registrar refuses to permit the above restriction to be entered, the trustees should, it is conceived, appeal to the Court, for the parties alone are not, it is apprehended, allowed to make entries on the certificate (*cf.* L. T. R., 1898, r. 146), and the tenant for life will be entitled to the custody of the certificate as he is now to the deeds.

Clearly it is right that the tenant for life *quâ* proprietor should have a right to create mortgages by deposit of the certificate, otherwise, such securities would be rendered very insecure, but it is equally clear that this right should be restricted, and it is, perhaps, doubtful whether Form 6 as it stands is sufficient for this purpose, though a mortgagee could not be advised to advance his money where that form is used: *cf.* Form 59.

Under this sub-section, a tenant for life registered after 1897 will merely have the powers (*see* Chap. I., Part III.) which are given to a registered proprietor; a statutory fee simple will not, it seems, be conferred on him under L. T. A., 1875, ss. 7 and 8, though this may formerly have been the case. The sub-section thus preserves all the legal and equitable estates of remaindermen, which can accordingly be dealt with by unregistered dispositions, notice of which should be given to the S. L. A. trustees. The sub-section shows that a legal estate may subsist off the register (*see* L. T. A., 1875, s. 49), and helps to explain that section.

The sub-section contains no words expressly divesting any estate in fee simple which may have been conferred by registration; but it may be, that it does so as regards all tenants for life who die after 1897, and as regards tenants for life who died before 1898, but without prejudice to the dealings (if any) by the heirs or devisees of the last-mentioned tenants for life: and *see* note to sub-s. 4.

S. 6 (8, 9).

SETTLED
LAND.

Interests of
beneficiaries
under
settlements
protected.

Effect as
regards
L. T. A.,
1875, s. 49.

Whether
estates in
fee simple
divested.

(9.) A person in a fiduciary position may apply for, or concur in, or assent to, any registration authorised by this section, and, if he is a registered proprietor, may execute an instrument of transfer or charge in the prescribed form in favour of any person whose registration is so authorised.

The object of the sub-section appears to be to give confidence to trustees; it would have been better, however, if the Act had contained a general indemnity for adopting its provisions: *cf.* C. A., 1881, s. 66. A doubt may perhaps be raised, whether trustees having a power to invest on real securities may lend on the security of registered land: *see* note to s. 8, *infra*, last paragraph.

Protection of
trustees.

SS. 6 (9, 10), 7 (1). A tenant for life is in a fiduciary position as regards S. L. A. powers: S. L. A., 1882, s. 53.

SETTLED
LAND.

The power for the registered proprietor to execute a transfer in favour of a person whose registration is authorised by the section, would enable the trustees, with powers of sale for instance, if they had been registered, to transfer to the tenant for life: *see*, also, L. T. R., 1898, r. 101. The power to execute a charge seems to relate to sub-s. 7, *supra*.

For prescribed forms, *see* L. T. R., 1897, rr. 79—120, and forms there mentioned.

(10.) In this section the expressions “tenant for life,” “settled land,” “settlement,” and “trustees of the settlement,” have the same meaning as in the Settled Land Acts, 1882 to 1890.

“Tenant for life”;
“settled land”;
“settlement.”

As to the expressions “tenant for life” and “settled land,” *see* note to sub-s. (1), *supra*.

For the meaning of “settlement” in this section, *see* S. L. A., 1882, ss. 2 (1) (2); 58 (2) (*Re Pocock and Prankerd's Contract*, 1896, 1 Ch. 306); 59 (*Re Wells*, 31 W. R. 764; *Re Simpson*, 1897, 1 Ch. 256); 61 (4); 63; S. L. A., 1884, s. 8; S. L. A., 1890, s. 4. A meaning must be attributed to “settlement” corresponding to that given to “tenant for life,” hence a settlement within S. L. A., 1882, s. 63, is not a settlement for the purposes of this section, except when a sufficient order, made under S. L. A., 1884, s. 7, is in force; for a limited order, *see Re Bagot's Settlement*, 1894, 1 Ch. 177, 184.

“Trustees of the settlement.”

For the meaning of “trustees of the settlement,” *see* S. L. A., 1882, ss. 2 (8), 38, 39, 60 (*Re Dudley*, 35 Ch. D. 338), 63; and S. L. A., 1890, s. 16.

Right to indemnity in certain cases. 38 & 39 Vict. c. 87.

7.—(1.) Where any error or omission is made in the register, or where any entry in the register is made or procured by or in pursuance of fraud or mistake, and the error, omission, or entry is not capable of rectification under the principal Act, any person suffering loss thereby shall be entitled to be indemnified in the manner in this Act provided.

Guaranteed title.

This section, in effect, substitutes a guaranteed for an absolute title.

Damages against County Councils.

As to damages against County Councils who are entitled to confer a higher title than that under which they are registered, *see* s. 19, *infra*.

The cases where indemnity is given are:—

S. 7 (1).

- (i) Where the register is wrong, but cannot be rectified under the L. T. A., 1875.

INDEMNITY.

- (ii) In the two cases in which the register would have been incapable of being rectified under the L. T. A., 1875, but is capable of being rectified under sub-s. 2, *infra*, namely:—

Indemnity where given.

(a) Where a registered disposition would, if unregistered, be absolutely void; and

(b) Where the wrong entry (if not rectified) would have the effect of depriving a person of land of which he is in possession: *see* notes to sub-s. 2, and to s. 12, *infra*.

Of course, in these cases, the indemnity goes to the person injured by rectification.

- (iii) Where there is rectification under the L. T. A., 1875, on the ground of fraud or mistake, provided the fraud or mistake occurred in a registered disposition for value, and the grantee did not know of it, and could not with reasonable care have discovered it: sub-s. 4, *infra*.

As to (i): For the sections dealing with rectification, *see* L. T. A., 1875, ss. 95, 96. Under those sections there cannot be rectification of the entry made on first registration of a proprietor with an absolute title, except to give effect to rights preserved under L. T. A., 1875, s. 7 (1), (3), nor of an entry of a transfer (if for valuable consideration) of land registered with an absolute title, except to give effect to incumbrances entered on the register: L. T. A., 1875, s. 30 (1). If, however, the consideration was paid out of trust money, the name of the trustee on the register may be replaced by the name of his *cestui que trust* at any time before the trustee transfers for value; but in this case no question of indemnity would arise: *see*, also, L. T. R., 1898, r. 101.

Where no power to rectify under L. T. A., 1875.

As to land registered with a possessory title, there may also (in favour of rights paramount to the fee simple conferred by registration) be rectification either of the entry made on first registration of a proprietor, or of an entry made on a transfer even if for valuable consideration, because the title conferred is (*see* L. T. A., 1875, ss. 8, 32) subject to estates paramount to the fee conferred by registration.

Where the improper entry on the register arises on a transfer *not* for valuable consideration, the register may be rectified to give effect to any rights not defeated by the last transfer for value, because the registration of a transfer not for valuable consideration only confers an estate, subject to unregistered estates, subject to which the transferor held: L. T. A., 1875, ss. 33, 46.

S. 7 (1).
 INDEMNITY.
 Power to rectify under L. T. A., 1897.

As to (ii): The L. T. A., 1897 (*see* sub-s. 2 and s. 12, *infra*), enables rectification in two new cases, namely:—First, where a registered disposition would, if unregistered, be absolutely void, *e.g.*, a registered disposition by a person who has got on the register by means of a forgery. Under the L. T. A., 1875, there could have been no rectification in this case unless (which would not often happen) the registered disposition was not for valuable consideration. This seems to be the result of L. T. A., 1875, ss. 98, 100. Secondly, where the result of the register remaining unrectified would be to deprive a person rightfully in possession of such possession. As to the meaning of “possession,” *see* note to sub-s. 2, *infra*.

This might happen, *e.g.*, where a mistake was made on a first registration with an absolute title.

Rectification under L. T. A., 1875.

As to (iii): This deals with cases of rectification under the L. T. A., 1875, and, except in cases of transfers *not* for valuable consideration, such rectification practically only arises as to land registered with a possessory title (*see* note as to (i), *supra*), or in a case where a person is on the register by means of a forged transfer or nullity.

Forged transfer.

A registered proprietor has, under L. T. A., 1875, s. 29, power to transfer by registered disposition, even though he got on the register by means of a transfer which was a forgery or nullity; but a forged transfer, even though registered, is in every case a nullity as regards passing any estate or interest to the transferee; it is not a disposition at all. If not, then no meaning can be given to sub-s. 4, *infra*. Probably, the register could be rectified under the L. T. A., 1875, by removing the name of the transferee under a forged transfer; but, as soon as he had transferred by a registered transfer *for value*, then, under the L. T. A., 1875, the register would be incapable of rectification, and the true owner would have lost his land: *see Gibbs v. Messer*, 1891, A. C. 248.

Gibbs v. Messer.

“Those who deal, not with the registered proprietor, but with a forger who uses his name, . . . cannot, by registration of a forged deed, acquire a valid title in their own person, although the fact of their being registered will enable them to pass a valid right [*i.e.*, by registered disposition] to third parties who purchase from them in good faith and for *onerous* consideration”: *S. C.*, p. 255.

The principle of the Australian case cited seems to be fully applicable to the present Acts.

Reasonable care.

Where, therefore, the circumstances are in any way suspicious, an intending purchaser ought to exercise the power conferred by C. A., 1881, s. 8 (*see* s. 9 (1), *infra*), enabling him to have the transferor's execution attested by a nominee of the purchaser.

Charges and transfer of charges.

As to charges, *see* L. T. A., 1875, s. 22; and as to transfers of charges, *ib.*, s. 40, as amended by First Schedule, *infra*.

Further, a person who suffers loss by reason of the registration of copyhold land, or customary freeholds requiring admittance, contrary to L. T. A., 1875, s. 2, is entitled to indemnity: *see* note on that section as amended.

S. 7 (1, 2).

INDEMNITY.

Indemnity in case of registration of copyholds. Guarantee of boundaries.

Section 83 (5) of the L. T. A., 1875, which rendered the description of registered land inconclusive, is repealed: *see* First Schedule, and s. 14 (1), *infra*. It results, therefore, that a person suffering loss in consequence of the misdescription of boundaries may, in a proper case, be entitled to indemnity whether the boundary was described on the register before or after 1898; but unless the boundaries are accurately defined pursuant to L. T. R., 1898, rr. 211, 212, the exact line of the boundary will be left undetermined (*ib.*, r. 213); hence no indemnity would be given for a small deviation in the case of general boundaries.

No indemnity is given in respect of a loss arising by reason of an error in an official certificate of search: L. T. R., 1898, r. 228.

Official searches.

(2.) Provided that where a registered disposition would if unregistered be absolutely void, or where the effect of such error, omission, or entry, would be to deprive a person of land of which he is in possession, or in receipt of the rents and profits, the register shall be rectified and the person suffering loss by the rectification shall be entitled to the indemnity.

See note to sub-s. (1), *supra*; an unregistered disposition by a person who claims under a forged document would be void; *secus*, if the disposition were registered and for value.

For dispositions void in mortmain, *see* Mortmain and C. U. Acts, 1888 and 1891; *see*, also, L. T. R., 1898, rr. 95, 96.

The principle of the L. T. A., 1875, under which the title conferred by the register was to prevail, except where no estates had been acquired by registration (s. 95, *supra*), is here abrogated, title in accordance with possession being maintained: *see*, however, s. 12, *infra*; and *see* L. Q. R., 1895, p. 357.

Title in accordance with possession to prevail.

For the purposes of this sub-section, it is conceived that the person in possession must be rightfully in possession, and that a title depending on the Statutes of Limitation would be of no avail unless, in the case of a possessory title, it was acquired or in course of being acquired before first registration (*see* amendment of L. T. A., 1875, s. 18), or unless there was power to rectify under s. 12, *infra*: *cf.* L. T. R., 1898, r. 245. The power to rectify under that section is wider than under L. T. A., 1875, s. 95: *see* note to s. 12, *infra*.

Meaning of "possession."

Rights in respect of mere occupation under leases or agreements

Rights of occupiers.

S. 7 (2, 3).

INDEMNITY.

for a term not exceeding twenty-one years are preserved by L. T. A., 1875, s. 18 (7).

As to paramount titles, *see* L. T. R., 1898, r. 101.

(3.) A person shall not be entitled to indemnity for any loss where he has caused or substantially contributed to the loss by his act, neglect, or default, and the omission to register a sufficient caution, notice, inhibition, or other restriction to protect a mortgage by deposit or other equitable interest, or any estate or interest created under section forty-nine of the principal Act, shall be deemed neglect within the meaning of this sub-section.

Persons dealing off the register entitled to indemnity.

This sub-section shows that if its provisions are complied with, a person dealing off the register (s. 49) will be entitled to indemnity if he suffers loss by reason of a rectification of the register, provided he has dealt on the faith that, subject to rights excluded from the effect of registration, a transfer for value confers a good root of title subject to equities affecting the estate of the transferee or any voluntary transferee from him : but *see* first note to sub-s. 2, *supra*.

As to mortgages by deposit, *see* last paragraph of s. 8, *infra*.

As to what is a sufficient caution, notice, &c.

"And the omission to register a sufficient caution, notice, inhibition or other restriction, &c." These words must not be given too wide a meaning.

Thus, to protect a mortgage by deposit against a new certificate being issued, it will be sufficient to despatch a registered letter in accordance with s. 22 (6) (f), and L. T. R., 1898, r. 200, *infra* (but *see* ss. 9 (6), 12, 13, *infra*); to protect a contract for sale against registered dispositions it will be sufficient to lodge a caution (but *see* note to s. 16, *infra*); to protect the interest of an assignee of a life estate (*see* S. L. A., 1882, s. 50; S. L. A., 1890, s. 4), a restriction (*see* L. T. R., 1898, First Schedule, Form 7); and to protect estates, interests and charges capable of being over-ridden (S. L. A., 1882, s. 20) by a tenant for life, the proper restriction and inhibition : *see* L. T. R., 1898, First Schedule, Form 6.

Where a mortgage is created off the register otherwise than by deposit under s. 8, last paragraph, *infra*, then notice by registered letter does not seem applicable, and an inhibition or caution should be obtained by the mortgagee. Also where a registered proprietor transfers the land to a mortgagee who insists on obtaining the statutory estate in the land, the equity of redemption should be protected by a caution.

No protection will be required for interests not prejudiced by registration, but, where an absolute title is registered, the para-

mount rights (if any) should appear on the register. See as to caution against registration with a higher title: L. T. R., 1898, r. 188.

S. 7 (3, 4, 5, 6).

INDEMNITY.

(4.) Where the register is rectified under the principal Act by reason of fraud or mistake which has occurred in a registered disposition for valuable consideration, and which the grantee was not aware of and could not by the exercise of reasonable care have discovered, the person suffering loss by the rectification shall likewise be entitled to indemnity under this section.

See note to sub-s. (1), *supra*.

(5.) The registrar may, if the applicant desires it, and subject to an appeal to the Court, determine whether a right to indemnity has arisen under this section, and, if so, award indemnity. In the event of an appeal to the Court, the applicant shall not be required to pay any costs except his own, even if unsuccessful, unless the Court shall consider that the appeal is unreasonable.

See L. T. R., 1898, r. 232, as to the jurisdiction of the registrar.

The "Court": see L. T. A., 1875, ss. 4, 114; and L. T. R., 1898, r. 234.

An appeal will, it seems, lie with respect to the amount awarded, as well as to the question whether a right to indemnity has arisen; there can be no objection, therefore, to submitting the case in the first instance to the registrar, who may administer an oath: L. T. A., 1875, s. 109; L. T. R., 1898, r. 261.

Claim to indemnity, how determined.

The provision as to costs should ensure that appeals to the Court will be made without hesitation in a proper case. No doubt this was thought desirable in view of the registrar being placed in a position more or less to protect the insurance fund: see next sub-s. and L. T. R., 1898, rr. 247, 269.

Costs.

As to appeals and applications to the Court, see L. T. R., 1898, rr. 231—247.

(6.) Where indemnity is paid for a loss, the registrar, on behalf of the Crown, shall be entitled to recover the amount paid from any person who has caused or substantially contributed to the loss by his act, neglect, or default.

SS. 7 (7), 8 (1).

INDEMNITY.21 Jac. I.
c. 16.

(7.) A claim for indemnity under this section shall be deemed a simple contract debt, and for the purposes of the Limitation Act, 1623, the cause of action shall be deemed to arise at the time when the claimant knows, or but for his own fault might know, of the existence of his claim. This section shall apply to the Crown in like manner as it applies to a private person.

Period of
limitation for
claim for
indemnity.

The period of limitation is six years: Limitation Act, 1623, s. 3. The cases of disability are now confined to infants and lunatics: *see* Mercantile Law Amendment Act, 1856, s. 10. A married woman is free to sue (*M. W. P. A.*, 1882, s. 1 (2)); that Act does not, however, expressly refer to the Statutes of Limitation.

Land
certificates,
office copies
of registered
leases, and
certificates of
charge.

8.—(1.) So long as a land certificate, office copy of a registered lease, or certificate of charge, is outstanding, it shall be produced to the registrar on every entry in the register of a disposition by the registered proprietor of the land or charge to which it relates, and on every registered transmission or rectification of the register, and a note of every such entry, transmission, or rectification shall be officially endorsed on the certificate or office copy, and the registrar shall have the same powers of compelling the production of certificates and office copies as are conferred on him by sections one hundred and nine and one hundred and ten of the principal Act as to the production of maps, surveys, books, and other documents.

Former
practice as to
production of
certificate.

A mortgage by deposit of the certificate before the passing of this Act was rendered valueless as a security, as it was the practice to allow entries to be made on the register without production of the certificate.

Mortgages
by deposit.

As to mortgages by deposit under this Act, *see* last paragraph of this section, and note thereto.

Office copy
leases.

Office copy leases will soon become obsolete: *see* *L. T. R.*, 1898, rr. 43, 55, 57.

Registrar
may require
production of
certificate.

The procedure for compelling production of a certificate is by summons, under the seal of the office, to the person in possession of the certificate, to attend and produce: *see* *L. T. A.*, 1875, ss. 109, 110; *L. T. R.*, 1898, rr. 236—239.

Solicitors may
inspect
certificates on
behalf of
registry.

The registrar has power to authorise a solicitor to inspect a certificate on behalf of the registry, and to make the proper endorsement thereon: *L. T. R.*, 1898, r. 208.

By rendering production of the certificate necessary on registered dealings, with the exceptions mentioned in sub-ss. 3, 4, *infra*, and in L. T. R., 1898, r. 207, the risk of personation is diminished: *see* also L. T. R., 1898, r. 161. Thus if A. be the person who ought to have the certificate, and the intending vendor or chargor cannot account for it, the presumption arises that the vendor or chargor is not A.: *see* L. Q. R., 1895, p. 361.

S. 8 (1, 2).
CERTIFICATES.
Risk of personation diminished.

For other cases where production of certificate is not necessary, *see* note to L. T. R., 1898, r. 208. Whenever deposited at the registry it will, however, be noted up with respect to these matters: Form 61.

Cases where production of certificate not required.

As to certificates generally, *see* L. T. R., 1898, rr. 204—206. As to notice to proprietor when a transfer and certificate is lodged for registration: *ib.*, r. 161.

For certificates of sub-charge and of incumbrances created prior to first registration, *see ib.*, r. 126.

As to certificates of leaseholds, *see ib.*, r. 94.

(2.) Where a land certificate or office copy of a registered lease has been issued, the vendor shall deliver it to the purchaser on completion of the purchase, or, if only a part of the land comprised in the certificate or office copy is sold, he shall, at his own expense, produce, or procure the production of, the certificate or office copy in accordance with this section for the completion of the purchaser's registration. Where the certificate or office copy has been lost or destroyed, the vendor shall pay the costs of the proceedings required to enable the registrar to proceed without it.

By this sub-section the expenses of producing the certificate, if issued, and of enabling the registrar to proceed without it in case of loss, are thrown on the vendor notwithstanding C. A., 1881, s. 3 (6)). This will ensure that due care is taken of the certificates; in many cases they will be left at the registry: *see* sub-s. 4 (i), *infra*.

Expenses of production of certificate.

The costs, if any (*see* Second Schedule and Fee Order, 1898, F. Chap. V., *infra*), of obtaining a new certificate in respect of the part of the land purchased seem to fall on the purchaser; sub-s. 4 (i) and (iv), *infra*, only relates to the issue of a certificate on first registration.

Costs of new certificate.

Where the original certificate relates to land sold in lots, or to land retained as well as the land sold, the vendor should obtain new certificates, made out in his name, for each part sold, before com-

Completion.

S. 8 (2, 3, 4).

CERTIFICATES.

Discharge of
incumbrances
on sale.Where vendor
is a chargee
sub-section
not
applicable.Loss or
destruction of
certificate.

pletion, to enable the purchaser to obtain a lien by deposit to secure his purchase-money. The contract should throw the cost of these certificates on the purchaser: *see* note to s. 16, *infra*.

As to the discharge of registered incumbrances upon sale, *see* L. T. R., 1898, r. 127.

Where the vendor is a registered chargee, who has not got the land certificate, the first part of this sub-section does not apply, and the certificate of charge only has to be handed over: sub-s. 4, *infra*.

As to the proceedings where the certificate is lost or destroyed, *see* next sub-section.

(3.) A new land certificate, office copy of a registered lease or certificate of charge, shall not be granted by the registrar in place of a former certificate, or office copy, which has been lost or destroyed, unless the applicant has filed with the registrar a statutory declaration and such other evidence, if any, as the registrar may think necessary, stating the fact and circumstances of the loss or destruction of the former certificate or office copy, nor until at least one advertisement of the application in the London Gazette and three advertisements in a London daily morning newspaper shall have been published at intervals of not less than seven days, and three advertisements in a local newspaper circulating in the district in which the land is situate, and such indemnity (if any) given as the registrar shall think fit.

This sub-section replaces L. T. A., 1875, s. 78, which is repealed by the First Schedule to this Act.

Lost
certificates.

These provisions, regulating the issue of certificates in place of those lost, are analogous to those adopted by limited companies; they become of great importance now that certificates are to be produced on registered dealings: sub-s. 1.

Meaning of
"statutory
declaration."

The expression "statutory declaration," means a declaration made by virtue of the Statutory Declarations Act, 1835: Interpretation Act, 1889, s. 21.

As to the registrar's jurisdiction, *see* L. T. R., 1898, rr. 232, 236, 276.

Notice of
deposit.

Where notice of deposit is entered, no new certificate will be granted, without notice to the depositor: L. T. R., 1898, r. 201.

(4.) Where a transfer of land is made by the registered proprietor of a charge, in exercise of the power of sale

conferred by the charge, it may be registered, and a new land certificate may be issued to the purchaser, without production of the former land certificate, but the certificate of charge (if any) must be produced or accounted for in accordance with this section. Subject to any stipulation to the contrary the proprietor of a registered charge shall not be entitled to have custody of the land certificate, or to require a land certificate to be applied for:—

S. 8 (4) (i-iii).
CERTIFICATES.

A land certificate will also be issued to a chargee on foreclosure absolute: L. T. R., 1898, r. 207.

A land certificate is to be prepared in all cases of first registration after 1897: sub-s. (i), *infra*. For the sake of uniformity of practice, certificates should be issued free of charge (where not already issued) to proprietors registered before that date.

On a sale by a first chargee, the purchaser will be registered free from subsequent registered charges: *cf. Re Richardson*, 12 Eq. 398; 13 Eq. 142. Sale by registered chargee.

It will not be necessary for a first or other chargee to stipulate for the custody of the land certificate, unless the charge is to secure further advances (L. T. R., 1898, r. 108, Form 41), in which case it will be safer to do so. In the case of a possessory title, the chargee should obtain the deeds relating to the title, unaffected by first registration, to enable him to prove his title on sale. Stipulation by chargee for custody of land certificate. Title deeds.

- (i.) On the first registration of freehold or leasehold land, and on the registration of a charge, a land certificate, office copy of the registered lease, or certificate of charge, as the case may be, shall be prepared, and shall either be delivered to the registered proprietor or deposited in the registry as the said proprietor may prefer;
- (ii.) If so deposited in the registry it shall be officially endorsed from time to time, as in this section provided, with notes of all subsequent entries in the register affecting the land or charge to which it relates;
- (iii.) The registered proprietor may at any time apply for the delivery of the certificate or office copy to himself or to such person as he may direct, and

S. 8 (4) (iv).

CERTIFICATES.

may at any time again deposit it in the land registry;

- (iv.) The preparation, issue, endorsement, and deposit in the registry of the certificate or office copy shall be effected without cost to the proprietor.

Sub-cc. (i)—(iv), *supra*, should have constituted a new sub-section. As to issue of certificate, *see*, also, L. T. R., 1898, rr. 19, 39.

It seems that the certificate will only be issued free of cost in cases of first registration after 1898; but *see* note to last sub-section.

The issue of certificates free of charge.

The object of issuing a certificate, free of charge, is to avoid any presumption that the proprietor who takes out a certificate does so for the purpose of effecting a mortgage by deposit. As to the old practice, *see* L. T. A., 1875, s. 10.

Receipts, &c., for certificates.

As to certificates generally, *see* L. T. R., 1898, rr. 204—208, *infra*.

Receipts for delivery out, and notes of delivery out, or deposit in the registry of certificates, will be taken: *ib.*, r. 206.

Deposit in registry will not create lien.

If a vendor deposits his certificate at the registry, his purchaser will obtain no lien to secure his purchase-money; for this purpose, the vendor must deliver it to the purchaser, who will not lose his lien by producing it to the registrar, pursuant to sub-s. 1, *supra*.

The registered proprietor of any freehold or leasehold land or of a charge may, subject to any registered estates, charges, or rights, create a lien on the land or charge by deposit of the land certificate or office copy of registered lease, or certificate of charge; and such lien shall, subject as aforesaid, be equivalent to a lien created by the deposit of title deeds or of a mortgage deed of unregistered land by an owner entitled in fee simple or for the term or interest created by the lease for his own benefit, or by a mortgagee beneficially entitled to the mortgage.

As to mortgages by deposit, *see* Chap. I. Part III. iii.

This paragraph (which should have been a new sub-section), replaces L. T. A., 1875, s. 81, which is repealed by the First Schedule: s. 18, *infra*.

Sub-mortgage by deposit.

Certificates of incumbrances and sub-charges.

Deeds also required in case of a possessory title.

The power to create an equitable sub-mortgage by deposit of a certificate of charge is new. As to a lien in the case of certificates of incumbrances and sub-charges, *see* L. T. R., 1898, r. 126.

In the case of a possessory title, the mortgagee, to enable him to prove his title when enforcing his lien, must obtain possession of the deeds relating to interests paramount to the estate-conferred by first registration, as well as the certificate.

This paragraph contains no saving of estates, rights, and interests paramount to the fee simple, conferred by registration; but under L. T. R., 1898, r. 204, Form 61, the certificate of title is made expressly subject to the paramount interests.

The general rule as regards a mortgage by deposit is, that it operates to the extent only of the beneficial interest of the mortgagor in the property: *Fisher on Mortgages*, 4th ed., p. 54; 5th ed., p. 19.

Thus, if a trustee entitled in fee improperly deposits title deeds of unregistered land by way of mortgage, and then absconds, no lien is created as against the beneficiaries: *Manningford v. Toleman*, 1 Coll. 670; *Newton v. Newton*, 4 Ch. App. 143. The position is not even altered if the trustee has, in his character of executor, power to sell or mortgage the property or give a receipt for the mortgage money to which the deeds deposited relate: *Re Morgan*, 18 Ch. D. 93.

This paragraph rightly alters the general rule as regards registered land: *see*, also, s. 6 (8), *supra*. The deposit of the land certificate by a trustee will, unless an entry to the contrary is made on the register, create a lien as against his beneficiaries, since it is to be equivalent to a lien created "by an owner entitled in fee simple . . . for his own benefit."

Suppose land is vested in a sole trustee on trust for sale with no power to mortgage; if the land were unregistered, the fact that he was a mere trustee would, in the ordinary course, appear from an investigation of the title; on the other hand, if the land were registered, the trust would not be shown (L. T. A., 1875, s. 83 (1)); hence the necessity for the alteration of the rule.

As to mortgages by deposit by a tenant for life, *see* s. 6 (8), *supra*, and note thereto.

The deposit of a certificate of charge by a trustee will, in like manner, create a lien against his beneficiaries. This, perhaps, strengthens the doubt whether trustees can be advised to invest trust money on the security of registered land: *see* L. T. A., 1875, s. 22, and note thereto; but *see* L. T. R., 1898, r. 228, and s. 6 (9), *supra*.

As this paragraph confers on the registered proprietor as such a power to create mortgages by deposit, it is clear that means must be devised for restricting that power in proper cases.

Now, cautions, inhibitions and restrictions are *prima facie* to be bars to registered dispositions only (*see* L. T. A., 1875, ss. 53—59); and not even if notice of the deposit (L. T. R., 1898, rr. 200—202) is entered on the Charges Register can the mortgage, perhaps, in strictness be called a registered disposition; but when it is recognized that the mortgage is no longer in the position of an unregistered right created under L. T. A., 1875, s. 49, it must be acknowledged that the mortgage for some purposes must be regarded as a registered disposition, and the date of the deposit as the date of the disposition.

S. 8.

CERTIFICATES.

Saving of interests paramount to a possessory or qualified title.

General rule as to mortgages by deposit.

Trustee mortgaging unregistered land by deposit of deeds.

Trustee mortgaging registered land by deposit of certificate.

Reason for alteration of the rule.

Mortgages of settled land.

Whether trustees may invest on security of registered land.

Entries on the register restrictive of the power to create mortgages by deposit.

S. 8.

CERTIFICATES.

Inhibitions
and restric-
tions against
charging.

No doubt a mortgage by deposit was, under the L. T. A., 1875, on the same footing as an unregistered right created under s. 49, but both Acts must now be read together (s. 26), and where inconsistent, the L. T. A., 1897, must prevail.

Assuming that inhibitions and restrictions can be framed (*cf.* L. T. R., 1898, r. 276) so as to fetter mortgages by deposit, it may be asked how one against charging is to be construed. Would such an one merely operate to fetter registered charges, or would it have effect also with respect to mortgages by deposit? But for the fact that, where an incumbent of a benefice is registered, provision is made (L. T. A., 1897, s. 15 (ii); L. T. R., 1898, rr. 197—199, Form 59) to inhibit him from creating mortgages by deposit, there could be little doubt that an entry against charging applied equally against mortgaging by deposit; and even as it is, it is conceived that it has that effect. At any rate, a mortgagee would be ill-advised to advance money in the face of such an entry. At the same time, until a judicial decision has been obtained, persons interested in preventing mortgages by deposit should insist on restrictions being made to refer expressly to the lien, and if the registrar refuses, should appeal to the Court.

It seems doubtful whether the registered proprietor may himself make an entry on the certificate if the registrar does not approve of it (r. 146), or what the effect of such entry, if made, would be: *see* amendment of L. T. A., 1875, s. 83 (1).

Restriction
preferable to
inhibition.

Wherever possible a restriction and not an inhibition against mortgages by deposit should be used, as the latter would cause unnecessary difficulties on completion of a sale: *see* s. 16, *infra*.

What
searches an
intending
mortgagee
by deposit
should make.

If, then, a mortgage by deposit is treated as a registered disposition, an intending mortgagee must search, as from the date when the certificate was last noted up (L. T. R., 1898, rr. 224—228) by telegram or otherwise, for cautions, inhibitions, restrictions and notices, before he takes the deposit.

No searches
required on
further
advances.

If a search is necessary on each further advance, then the scheme of mortgage by deposit for securing an account current falls to the ground, for a search, even by telegram, would be impossible, because it would not as a rule do to delay the cashing of a cheque across the counter until a reply telegram could be received; moreover, in most cases neither the mortgagor nor his solicitor would be present, so that the search could not be made: L. T. R., 1898, rr. 225, 227.

Further, if mortgages by deposit are regarded as registered dispositions, so as to render them subject to cautions, &c., then it follows that a caution lodged, after the deposit, can have no more effect than a caution lodged against the proprietor of the land, after a registered charge has been effected for securing an account current.

Again, if a mortgagee on making a further advance does not

search, he would not, it is conceived, be stamped with notice of any caution or other entry made since the date of the original advance. For such an entry, it seems, is no more notice than the registration of a deed in the Middlesex Registry is notice: *Bedford v. Backhouse*, 2 Eq. Ca. Ab. 615; *Wrightson v. Hudson*, *ib.* 609; *Williams v. Sorrell*, 4 Ves. 389; *Morecock v. Dickens*, Amb. 678; *Bushell v. B.*, 1 Sch. & Lef. 90, 103; *Underwood v. Lord Courtown*, 2 Sch. & Lef. 41, 64; *see also* L. T. A., 1875, s. 64.

S. 8.
CERTIFICATES.

Though it has been submitted that mortgages by deposit are subject to cautions, it is not meant by that that the registrar is to send notice to the cautioner of the intended mortgage, for unless notice of the deposit is entered on the register, the registrar may never know of the deposit at all, and even in this case he may not know till after the transaction has been carried out.

Effect of notice, of caution, &c., on intending mortgagee.

Herein, then, lies the distinction between a registered disposition proper and a mortgage by deposit. In the case of the former, the caution must be warned off before the disposition can be registered, and the transferee or registered chargee will, when registered, take free from the equities of the cautioner; in the case of the latter, the caution will not be warned off, but as the intending mortgagee who discovers a caution has notice that the cautioner has, or has claimed to have, some interest in the land (Form 12), he must ascertain that the interest will not affect the intended mortgage.

Cautions.

Again, suppose the intending mortgagee discovers an inhibition to the effect that, "Until further order no charge is to be created"; or a restriction to the effect that, "No charge is to be made without the consent of A. B." The effect of the inhibition would, it is submitted, be to put the intending mortgagee on inquiry as to the whole title off the register, while the restriction would render it necessary to obtain the consent of A. B.

Inhibitions and restrictions.

Of course, if before making a further advance the mortgagee searches and finds an entry made since the date of the original advance, he would be in the same position with regard to the further advance as if he were making a new loan.

It is not here suggested that mortgages by deposit are subject to the rights "protected" (*cf.* L. T. A., 1875, s. 49) by cautions, inhibitions, restrictions, notices of leases, &c., on the ground that they are "registered rights" within the last paragraph of s. 8, but because of notice. It is conceived that the "registered estates, charges, or rights" in this paragraph only include such estates, charges, or rights as require the production of the certificate before they can be registered: *see* note to L. T. R., 1898, r. 208. If it is held otherwise, then the words "registered before the deposit is made" must be supplied, else the whole scheme of mortgages by deposit to secure an account current falls to the ground.

Meaning of "registered rights" in last paragraph of s. 8.

- S. 8. One useful result of the plan of registered charges is, that it enables a second mortgage by deposit to be created. For, as it is not necessary (*see* sub-s. (4), *supra*) in many cases for a first chargee to have the custody of the land certificate, the proprietor of the land remains able to deposit it. The mortgage, of course, will be subject to the power of sale conferred on the chargee, hence the mortgagee must give him notice of the deposit.
- CERTIFICATES.**
- Second mortgages by deposit. A mortgage by deposit should usually be made with an accompanying memorandum in order to prevent the mortgagee being deprived of his costs on a sale by the Court if the mortgagor becomes bankrupt: *Ex parte Brightens*, 1 Swanst. 3.
- Memorandum of deposit. A mortgagee by deposit should, as a rule, give notice of the deposit (s. 22 (6) (f), *infra*) to the registrar, by registered letter or in writing, who will enter the notice on the register. The notice will have the effect of a caution (L. T. R., 1898, r. 200), and no new certificate will be issued to the proprietor without notice to the mortgagee: *ib.*, r. 201. Some customers of bankers may, perhaps, object to this entry being made on the register, or even to the lodgment of a caution.
- Entry of notice of deposit. One result of omitting to take this precaution would be that, if a new certificate were issued and registered dispositions made, the mortgagee would not be entitled to indemnity: s. 7 (3), *supra*. Having regard to s. 8 (3), *supra*, it seems improbable that a new certificate would be issued without the knowledge of the mortgagee, so that in special cases, no doubt, the risk will be taken.
- Effect of non-service of notice. As to whether a mortgage by deposit is, when notice thereof is entered in the Charges Register, a registered disposition for value for the purposes of ss. 9 (6), 12 and 13, *infra*: *see* notes to ss. 12 and 13.
- Mortgagee's priority not postponed by non-service of notice. It may, perhaps, be contended that, if the entry is not made on the register, the mortgagee's priority, as respects any advance made subsequently to the creation of an interest under L. T. A., 1875, s. 49, which is protected by a caution, would be postponed in favour of a purchaser for value of such an interest, on the ground that the interest would never have been created if the proper entry had been made. The answer, however, is that, if a person dealing under L. T. A., 1875, s. 49, ought to search for cautions, &c., he ought equally to inquire as to the custody of the land certificate. To make the mortgagee lose his priority as well as the benefit of the insurance fund would be harsh, and it is not likely that it will be so held.
- Priorities. As to the priority acquired by possession of title deeds, *see Re Castell & Brown, Limited*, 1898, 1 Ch. 315; *Hopkins v. Hemsworth*, 1898, 2 Ch. 347; also 42 Sol. J. 304.
- Death duties. As to death duties with respect to mortgages by deposit, *see* note to s. 13, *infra*.

As to the production and noting up of the certificate on registered dealings, *see* sub-s. (1), *supra*, and note. SS. 8, 9 (1, 2).

As to the granting of a new certificate being made conditional on sufficient advertisement being issued and evidence furnished as to loss or destruction of original, *see* sub-s. (3), *supra*. CERTIFICATES.
Production and noting up of certificate.

For provisions as to issue and noting up of certificates free of cost, *see* sub-s. (4) (i), (ii), (iii), (iv), *supra*. Grant of new certificates.

As to ascertaining roughly the value of land from entries in the register, *see* s. 22 (6) (h), *infra*; L. T. R., 1898, rr. 203, 222; Forms 1, 2, 3, and 6. Issue of certificates on first registration as of course.

Where it is required to negotiate a loan with no delay, the mortgagee can require the proprietor to have a search made by telegram, and have the answer sent to the intending mortgagee: Value of land. Searches by telegraph. L. T. R., 1898, rr. 225—227.

9.—(1.) The provisions of section eight of the Conveyancing and Law of Property Act, 1881, shall apply, so far as applicable thereto, to transfers of registered land as though such transfers were made by deed, and a transfer of land made by the proprietor of a registered charge with power of sale shall operate as a conveyance in professed exercise of the power of sale conferred by the said Act. Transfers and charges. 44 & 45 Vict. c. 41.

Under C. A., 1881, s. 8, a purchaser has the right to require the execution of the conveyance by the vendor attested by a nominee of the purchaser: *see* note to s. 7 (3), *supra*; also L. Q. R., 1895, p. 362; *Gibbs v. Messer*, 1891, A. C. 248. Purchasers' protection against personation.

For the power of sale, *see* C. A., 1881, ss. 19—22. Under this sub-section, where the charge is "with a power of sale," a sale, whether made under a charge, registered before 1882 or not, will nevertheless, it seems, have the same effect: *see* C. A., 1881, ss. 1 (2), 19 (4). Sub-section applies to transfers made after 1897.

All charges registered after 1898 will, subject to an entry to the contrary, have a power of sale (C. A., 1881, s. 19 (1)), for they must be executed as deeds (L. T. R., 1898, r. 156); for an exception, *see* *ib.* r. 116. As to the chargee's power to transfer on sale, *see* L. T. A., 1875, s. 27, and next sub-section. Registered chargee's power of sale.

(2.) The provisions of sections nineteen, twenty, twenty-one (except sub-sections one and four), twenty-two, twenty-three, and twenty-four of the same Act, shall similarly apply to registered charges.

See note to last sub-section.

The provisions of the C. A., 1881, made applicable to charges by Effect of sub-section.

S. 9 (2, 3).
 TRANSFERS
 AND CHARGES.

Form of
 transfer by
 charges.

Power to
 foreclose.

Restraint on
 anticipation.

Implied
 covenant to
 pay.

Remedies
 under C. A.,
 1881, s. 44,
 applicable.
 Building
 societies.

this sub-section, confer power to sell and give a receipt for the purchase-money, to insure, to appoint a receiver, and to cut timber. A registered chargee, therefore, to the extent of these powers, is placed in the position of a mortgagee by deed of unregistered land.

For further provisions of the C. A., 1881, which are applicable to registered charges, *see* note to L. T. A., 1875, s. 25; and as to other provisions, *see ib.*, ss. 23—28, and notes.

For form of transfer under chargee's power of sale, *see* L. T. R., 1898, r. 90, Form 29.

As to charges generally, *see ib.*, rr. 106—127.

(3.) Every registered proprietor of land may in the prescribed manner charge it with an annuity or other periodical payment, and the provisions of the principal Act and this Act with regard to charges shall apply to any such charge. Every registered proprietor of land may charge it, in favour of a building society under the Building Societies Acts, by means of a mortgage made in pursuance of or consistent with the rules of that society, and the mortgage shall be deemed a charge made in the prescribed manner, and shall be registered accordingly.

This sub-section should be read with L. T. A., 1875, ss. 22—28, *supra*.

For prescribed mode of creating annual charges, *see* L. T. R., 1898, r. 108, Form 40.

The power to foreclose under L. T. A., 1875, s. 26, should be negatived in the case of annual charges: *cf.* C. A., 1881, s. 44.

No restraint on anticipation can be imposed in a charge (*see* sub-s. 4, *infra*), but the same effect can be obtained (*ib.*); hence there seems no reason why a jointure should not be charged under this sub-section, as being an annuity to commence at a future date; but it would be improper to do so where the jointure is capable of being over-reached under S. L. A., 1882, s. 20.

A covenant to pay will be implied in the absence of an entry on the register to the contrary: L. T. A., 1875, s. 23. It seems that the statutory covenant can be modified in any way: L. T. R., 1898, r. 107, Form 39.

The remedies conferred by s. 44 of the C. A., 1881, for the recovery of annual sums, seem to apply to an annuity charged under this sub-section, in addition to the remedies expressly conferred.

A certified copy of a charge in favour of a building society may be filed: L. T. R., 1898, r. 163.

See as to mortgages to public bodies, *ib.*, r. 152.

Mortgages to building societies usually provide for further

advances. Their mortgages would seem to be on the same footing S. 9 (3, 4, 5, 6).
in this respect, as charges to secure further advances: see L. T. A.,
1875, s. 22 and note thereto.

TRANSFERS
AND CHARGES.

As to discharges of mortgages to building societies, see L. T. R.,
1898, r. 113.

As to transfers of mortgages by building societies, see *Re Rum-
ney & Smith*, 1897, 2 Ch. 351.

The Building Societies Acts, 1874, 1875, 1877, 1884, and 1894, "Building
may be cited either as the Building Societies Acts, 1874 to 1894 Societies
(Short Titles Act, 1896), or as the Building Societies Acts: Building Acts."
Societies Act, 1894, s. 29.

(4.) Nothing contained in any charge shall (i) take
away from the registered proprietor thereof the power of
transferring it by registered disposition or of requiring
the cessation thereof to be noted on the register, or (ii)
affect any registered dealing with land or a charge in
respect of which the charge is not expressly registered or
protected, in accordance with the principal Act and this Act.

The first part of this sub-section seems merely a restriction on Restriction on
the form (Form 39) of a charge, and would not prevent the effect of transfers of
a restraint on alienation being obtained by an inhibition, *e.g.*, until charges.
further order, this charge is not to be transferred during the present
coverture of the creditor, with her husband A. B.: see L. T. A.,
1875, ss. 53, 57, and 58 as amended; also note to sub-s. 3, *supra*.

As to the second part of this sub-section, see L. T. R., 1898, Consolidation
r. 115 and note thereto. of charges.

For the meaning of "protected," *cf.* L. T. A., 1875, s. 49.

(5.) The registrar may, on the application, or with the
consent, of the registered proprietor of the land, and of
the proprietors of all registered charges (if any) of equal
or inferior priority, alter the terms of a charge.

See L. T. R., 1898, r. 111, and Form 42.

Under this sub-section and L. T. A., 1875, s. 28, the registrar Variation of
may alter the priority of a charge at any time after registration, terms of
without prejudice, of course, to a prior chargee whose consent is charge.
not obtained.

See, also, as to priority of charges, L. T. R., 1898, rr. 101,
117—120.

(6.) Where a person on whom the right to be registered
as proprietor of land or of a charge has devolved by reason

SS. 9 (6), 10. of the death or bankruptcy of the registered proprietor, or has been conferred by an instrument of transfer or charge, in accordance with the principal Act and this Act, desires to transfer or charge the land or to deal with the charge before he is himself registered as proprietor, he may do so in the prescribed manner, and subject to the prescribed conditions. Subject to the provisions of the principal Act with regard to registered dealings for valuable consideration, a transfer or charge so made shall have the same effect as if the person making it were registered as proprietor.

**TRANSFERS
AND CHARGES.**

“Registered dealings for valuable consideration.”

Power for person entitled to be registered to execute registered disposition.

Penalty for unqualified persons drawing instruments.

The sub-section partially repeals L. T. A., 1875, s. 49.

See also L. T. R., 1898, r. 101, and note thereto.

As to the meaning of “registered dealings for valuable consideration,” see note to s. 12, *infra*; also L. T. R., 1898, r. 245.

An instrument executed under this sub-section is to be in the same form as is required for a disposition by the registered proprietor (L. T. R., 1898, r. 153). The transferor has either to be subsequently registered, or his right to be registered has to be shown to the satisfaction of the registrar: *ib.*

As to dealings under this sub-section with a portion of the land comprised in a title, see *ib.*, r. 154.

10. Every person who (not being a barrister or a duly certificated solicitor, notary public, conveyancer, special pleader, or draftsman in equity) either directly or indirectly, for or in expectation of any fee, gain, or reward, draws or prepares any instrument of transfer or charge, or an application to register restrictive conditions, or to alter or discharge, or alter the priority of a registered charge, or any other prescribed instrument, shall incur a fine not exceeding fifty pounds, which shall be recoverable before a Court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

Provided that this section shall not extend to—

- (a) any public officer drawing or preparing instruments and applications in the course of his duty; or
- (b) any person employed merely to engross any instrument or application.

The Summary Jurisdiction Acts mean the Summary Jurisdiction

Act, 1848 (11 & 12 Vict. c. 43), and the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), and any Act, past or future, amending those Acts, or either of them: Interpretation Act, 1889, s. 13 (6), (7), (10). SS. 10, 11.
UNQUALIFIED
DRAUGHTSMEN.

This section follows the Stamp Act, 1891, s. 44, and *cf.* the Solicitors Act, 1874, s. 12.

11. Section two of the statute of the thirty-second year of the reign of Henry the Eighth, chapter nine, which prohibits sales and other dispositions of land of which the grantor or his predecessor in title has not been in possession for one whole year previously to the disposition being made, is hereby repealed. As to statute of 32 Hen. 8, c. 9.

At common law a right of entry cannot be conveyed except by way of release to the person in possession.

The enactment repealed, so far as material, is as follows:—

“No person . . . shall from henceforth bargain, buy or sell, or by any ways or means obtain, get or have any pretended rights or titles, or take, promise, grant, or covenant to have any right or title of any persons . . . in or to any . . . hereditaments (except such persons . . . which shall so bargain, sell, give, grant, covenant, or promise the same, their ancestors, or they by whom . . . they claim the same, have been in possession of the same, or of the reversion or remainder thereof, or taken the rents or profits thereof by the space of one whole year next before the said bargain, covenant, grant, or promise made) upon pain that he that shall make any such bargain, sale, promise, covenant, or grant, do forfeit the whole value of the . . . hereditaments so bargained, sold, promised, covenanted or granted, contrary to the form of this Act; and the buyer and taker thereof knowing the same, do forfeit also the value of the said . . . hereditaments so by him bought or taken as is above said; the one half of the said forfeitures to be to the King our Sovereign Lord and the other half to the party that will sue for the same in any of the King's Courts of record by action of debt, bill, plaint, or information; in which action, bill, plaint, or information, no essoin, protection, wager of law, nor injunction shall be allowed.”

Enactment relating to champerty repealed.

A pretended title within the meaning of the statute is a title which is either in fact fictitious, or a title which, though not Meaning of “pretended title.”

SS. 11, 12.

PRETENDED
TITLES.Statutory
power to
convey right
of entry by
deed.

fictitious (*e.g.*, a mere right of entry), was not, under the common law doctrine above mentioned, capable of being conveyed: *Jenkins v. Jones*, 9 Q. B. D. 128, 134.

The common law and the enactment here repealed have, however, been superseded as regards the second kind of title by 8 & 9 Vict. c. 106, s. 6, which enables rights of entry (except the benefit of a right of entry under a condition broken before the date of conveyance) to be disposed of by deed.

As under the Acts (*see*, now, L. T. R., 1898, r. 156) it was not necessary for an instrument of transfer of registered land to be executed as a deed, nor was the instrument made equivalent thereto, the repeal was, it is conceived, intended to enable a right of entry to pass by registered disposition not executed under seal.

This seems, as regards registered land, to be the effect of the repeal, inasmuch as it does not seem right to regard a registered title, even where a mere nominee is on the register, as a fictitious title. If a registered title cannot be a fictitious title, then whether or not the proprietor has been in possession for the year prior to the date of transfer seems immaterial. Possibly, however, it was thought that, where a proprietor was on the register under a void transfer, the repealed statute might prevent his being able to confer a title on a transferee for value, but it is submitted that ss. 30, 95, 100, of the L. T. A., 1875, were sufficient for this purpose.

Repeal as to
unregistered
land.As to title by
possession.

Why the repeal is extended to unregistered land is not clear.

12. A title to registered land adverse to or in derogation of the title of the registered proprietor shall not be acquired by any length of possession, and the registered proprietor may at any time make an entry or bring an action to recover possession of the land accordingly. Provided that where a person would, but for the provisions of the principal Act or of this section, have obtained a title by possession to registered land, he may apply for an order for rectification of the register under section ninety-five of the principal Act, and on such application the Court may, subject to any estates or rights acquired by registration for valuable consideration in pursuance of the principal Act or this Act, order the register to be rectified accordingly. And provided also, that this section shall not prejudice, as against any person registered as first proprietor of land with a possessory title only, any adverse claim in respect of length of possession of any other person who was in

possession of such land at the time when the registration of such first proprietor took place.

S. 12.

POSSESSION.

"Land" includes an easement (s. 24, *infra*); hence, it seems that the prescription of an easement is affected as well as a title by possession under the Statutes of Limitation. As to the creation of easements, see note to L. T. A., 1875, s. 18.

Prescription Act, 1832, and the Statutes of Limitation.

It should be observed that it is not obligatory on the Court, when an undefeated title by possession is shown, to make an order under this section.

Discretion of Court.

This section replaces L. T. A., 1875, s. 21 (repealed First Schedule, *infra*), with which it is identical, save for the first proviso. The "provisions of the principal Act" mentioned in the first proviso must refer to the repealed section.

Registration with an absolute or qualified title, where the Statutes of Limitation have commenced to run, stops their further progress; the second proviso, however, prevents this in the case of a possessory title: see Amendment of L. T. A., 1875, s. 18. The second proviso only says "as against any person registered as first proprietor"; of course, a transferee, not for value, from him would be in the same position; so also is a transferee for value (L. T. A., 1875, s. 32), for the right is "capable of arising" at the time of first registration. It is conceived that the right can be asserted by any person claiming under the person who was in possession at the time of first registration, though the section does not say so.

Possessory title.

"Possession," in the second proviso, must, it seems, include "Possession." receipt of rents and profits: cf. s. 7 (2), *supra*.

"Subject to any estates or rights acquired by registration for valuable consideration in pursuance of the principal Act or this Act": see L. T. A., 1875, ss. 22, 30—32, 35—37; L. T. A., 1897, ss. 9 (3), 22 (6) (b) (c); L. T. R., 1898, rr. 92, 93, 123—125; and see L. T. R., 1898, r. 245. It is conceived that the rights acquired by registration for value would include those acquired under a mortgage by deposit (s. 8, last paragraph), of which notice (L. T. R., 1898, rr. 200—202) has been entered on the Charges Register: see note to s. 12.

Registered estates acquired for value.

Mortgages by deposit.

The power to rectify conferred by this section is wider than that under L. T. A., 1875, s. 95, for every estate not acquired for value may, under this section, be displaced (see note to s. 7 (1), *supra*); e.g., rights acquired by registration with an absolute title may be displaced.

Power to rectify wider than under L. T. A., 1875, s. 95.

It is conceived that, on a transfer for value, the rights (so far as permitted by this section) in course of being acquired under the Statutes of Limitation would cease as against the transferee, but that time would again begin to run against him as from the date of his registration, else no rectification could be had except as against a proprietor who derived title otherwise than for value.

Effect of a registered transfer for value.

S. 12.

Possession.

Possessory
claim to be
protected by
caution.The principle
of the section
wrong.Suggested
amendment.

Where a person would, but for the L. T. A., 1875, or this section, have obtained a title, he should at once lodge a caution to ensure notice of any attempt by the registered proprietors to defeat the claim by a registered disposition for value.

It is submitted that it is wrong in principle to place the claimant by possession in the position of plaintiff, which will be the case where he applies for rectification.

Again, it seems inequitable that the twelve years or longer possession of the claimant should be nullified by a registered dealing for value, and that the claimant should have to remain in possession for another twelve years at least before he has a right to apply under this section.

What is wanted is either—(i) that the purchaser, chargee, or mortgagee should be given indemnity on proof of the title by possession, on the ground that he was dealing on the faith of the register, and notwithstanding that he neglected to ascertain that he would be unable to go into possession on completion or in default of payment of the mortgage money; or (ii) that the purchaser, chargee, or mortgagee should be bound, at his peril, to make proper inquiries as to the state of possession. Moreover, no sufficient reason can be shown why an intending purchaser, chargee, or mortgagee should be absolved from making these inquiries in the case of registered land any more than if the land were unregistered.

Where land is conveyed on trust for sale, and trusts of the proceeds of sale are declared by a separate deed, the title deeds do not disclose who is entitled to possession any more than the register does; but no one has ever suggested that the proper inquiries are in this case impracticable.

Again, suppose a purchaser actually takes possession of the land which he intended to purchase, and subsequently discovers that the registered description includes other land, a title to which, apart from this section, would have been acquired by a third party under the statutes; then, if the registered disposition for value has ousted the possessory right and no new right has been acquired, the purchaser, though he failed to make inquiries as to possession, will, in this case, be entitled to oust the possessory owner from property he did not intend to purchase.

It is submitted, then, that the proper course is:—

1. To permit the Statutes of Limitation to have full effect with respect to registered land.

2. To provide proper machinery for compulsorily registering the person who has proved his title under the statutes.

This will ensure the proper operation of the register, and may readily be effected by ousting the possessory owner in favour of the registered proprietor, if the former does not register within a

fixed time from the date when his title is proved in Court or admitted by the registered proprietor.

S. 12.

But assuming that it is necessary for a registered disposition for value to displace a title by possession, the right course would be apply the statutes to registered land and enable the possessory owner as of right to be registered, subject to the registered proprietor being able to show that the possessory estate has been ousted by a registered disposition for value. If the case, the proprietor should have no difficulty in proving this, whereas strict proof of a possessory title is likely to be impossible. It should be made sufficient for the person in possession, in the first instance to prove mere possession, and the onus of proof that a title has not been acquired under the statutes should be thrown on the registered proprietor.

Possession.

Alternative suggestion.

The desire to exempt registered land from the operation of the statutes seems to arise from some confusion of thought.

Reasons why the Statutes of Limitation should apply.

An intending purchaser of unregistered land must, before he can complete, obtain satisfactory answers to the following three questions:—

- (i) Shall I obtain the legal estate?
- (ii) Will the equities be bound?
- (iii) Will possession or the right to receipt of rents and profits be obtained on completion?

The most perfect system of registration of title that could be devised could do no more than answer the first two questions in the affirmative. The third question remains. If inquiries on the spot answer it in the affirmative, then the purchaser may complete in perfect safety, so far as an adverse title under the statutes is concerned; if not, not.

If a purchaser neglects to make inquiries, he ought to take the risk.

The Acts as they stand profess to confer on a purchaser from the registered proprietor the right to possession, and so render the answer to the third question unnecessary; but a purchaser who does not desire to be involved in an ejectment action will make the inquiries: *see* also s. 7 (3), *supra*. It is not the proper function of a register to show possession, but only to show title. The two things are essentially distinct.

Inquiries as to possession still necessary.

Precisely the same principles are applicable to an intending chargee or mortgagee.

The seven following cases will serve to indicate the general result of the section:—

Effect of section.

- (a) An owner of unregistered land cannot effect a straightening of his boundary with the adjoining proprietor of registered land without taking a transfer from the proprietor, for, although the proprietor might after twelve years have acquired a good title to the unregistered land, he would, until the register was rectified, which would probably cost

Straightening of boundaries as between an owner and a proprietor.

S. 12.

POSSESSION.

As between
two
proprietors.

Case of miss-
ing persons.

Disputes as to
boundary
lines.

more than a transfer in the first instance, always be able, by means of a registered disposition for value, to defeat the inchoate right of the owner. In practice, such a right would more often than not be defeated through inadvertence.

- (b) In like manner two adjoining registered proprietors will be unable to adjust their boundaries without taking cross transfers. It is assumed in both of these cases that the description of the land on the register will be too accurate to permit of the transactions being carried out without an alteration on the register.
- (c) Suppose a registered proprietor dies intestate, and that his heir-at-law cannot be found, and, no letters of administration being taken out, A., the person next entitled, goes into possession. Then, after twelve years' uninterrupted possession (ignoring cases of disability), A. will, it seems, be entitled to apply to the Court for registration in the place of the deceased proprietor, and the Court may order A. to be so registered in the exercise of its discretion; but it is not clear whether it would do so if administration were thereupon taken out and the administrator claimed to sell.
- (d) No description, however accurate (*see* L. T. R., 1898, rr. 211, 212), can determine what is the mathematical line which divides one parcel of land from another, not even if the land is expressed to be bounded by a road: *see* 41 Sol. J. 486.

Whenever, therefore, there is any dispute as to what the land is, which is described on the register, it will be necessary to ascertain what was meant by the description *when the land was registered*, seeing that from the time of registration length of possession confers no title as between registered proprietors. In other words, inquiries must be made as to the possession (ignoring cases of disability) during the twelve years *next preceding first registration*. This will show what the first registered proprietor was entitled to register.

Now, after a lapse of time, it will be impossible to prove the exact position with regard to possession during those twelve years; hence, perforce, either evidence of possession during, say, the last thirty years must be adduced, and the inference accepted that possession during the twelve years preceding first registration corresponded thereto, or some other expedient must be devised to meet the difficulty.

As regards disputes with respect to boundary lines, then the effect of the section is probably to extend the time within which a title by possession may be acquired. This shows to be untenable the opinion that, because the land is to be accurately described on the register, the necessity for the Statutes of Limitation is gone.

- (e) Where it is not a mere question of boundary lines, but it so happens (*e.g.*, by reason of a conveyancing error: *see* 41 Sol. J., 486, 487) that A. has been in possession for, say, forty years of a substantial plot of land which he purchased from B., but which he has permitted to remain in B.'s name on the register; then on B.'s death, his executors, being ignorant of A.'s purchase, sell and transfer the land to C., who is registered: C. will either obtain a good title or indemnity, according as A. is, or is not, responsible for the omission of his name from the register. If A. is in fault, he will lose his land, without indemnity. The penalty will thus be out of all proportion to the error.
- (f) The proprietor of a registered charge who goes into possession will never acquire a title against the proprietor of the land without applying to the Court either for foreclosure (L. T. A., 1875, s. 26) or for rectification under this section. He will, therefore, always, until foreclosure or rectification, be liable to account for rents and profits to the proprietor of the land from the time of taking possession.
- This, however, will be obviated where the security is made by means of a registered transfer of the land.
- (g) It is not clear whether in this section "proprietor" includes proprietor of a charge; if it does, then a charge never becomes barred by non-payment of interest, and it may be doubted whether the Court under this section has power to cancel the charge; if "proprietor" is not so inclusive, then the registrar, "on due proof of the satisfaction" of the charge, has power to cancel it: L. T. A., 1875, s. 28; L. T. R., 1898, r. 112.

SS. 12, 13
(1, 2, 3).

POSSESSION.

Conveyancing
mistakes.

Possession by
proprietor of
charge.

Non-payment
of interest
secured by a
charge.

13.—(1.) On every application to register land with an absolute title, or to register a transmission of land, the registrar shall inquire as to succession duty and estate duty.

As to
succession and
estate duty.

(2.) If, on such application, it appears that there is, or is capable of arising, any such liability to succession duty or estate duty as would affect the purchaser from the person to be registered as proprietor if the land were unregistered, the registrar shall enter notice of the liability on the register in the prescribed manner.

(3.) Succession duty and estate duty shall not—

(a) unless so noted on the register; or

c.

S. 13 (3).

SUCCESSION
AND ESTATE
DUTY.

(b) unless in the case of a possessory title the liability to the duty was, at the date of the original registration of the land, subsisting or capable of arising; or

(c) unless in the case of a qualified title the liability to the duty was included in the exceptions made on such original registration of the land;

affect a bonâ fide registered purchaser for full consideration in money or money's worth, although he may have received extraneous notice of the liability in respect thereof.

See L. T. R., 1898, rr. 171—174, *infra*.

Crown not
named.

Though not named the Crown is probably bound, otherwise sub-s. 3, *supra*, would be devoid of effect. The Crown is too great a person and corporation to be bound by the general use of either of those expressions; the rule against the Crown being bound unless named is convenient in practice, but it is conceived that there is no inherent necessity for the use of the terms "the Crown" or "Her Majesty" if the intention to bind the Crown is otherwise clearly indicated in the Act: and see *R. v. Bayly*, 1 Dr. & War. 213, 224.

Duty of
registrar.

"Transmission
of land."

The obligation of the registrar to inquire as to duty extends to an application to register a transmission of any land whether registered with an absolute title or not; and "transmission of land" does not include, it is conceived, a registered charge, or a mortgage by deposit; the Rules seem to contemplate entry of notice "upon any examination of title," and where the personal representative assents to a devise or appropriation, or transfers otherwise than on sale: L. T. R., 1898, rr. 171, 173.

Form of
entry.

The entry is to be in the Charges Register: *ib.*, r. 171.

For form of notice under this section, see *ib.*, r. 171, Form 50.

The notice is not required on registration of the personal representative: *ib.*, r. 172.

Power of
disposition
free from
duty.

This seems to assume that the personal representative can transfer on sale free from estate duty as well as succession duty. And as he can transfer on sale free from duty, he can also, for purposes of administration, effect a registered charge or mortgage by deposit free from duty.

Cancelling
entry.

As to cancelling notice of liability to duty and evidence required, see *ib.*, r. 174.

Effect of
section.

This section exempts a "registered purchaser" in good faith, for full consideration in money or money's worth, from all liability to

succession or estate duty, unless the register discloses it, or, in the case of a possessory title, unless the abstract of the title discloses the liability to duty.

An exchange would be within this section; the land exchanged is "money's worth."

"Extraneous notice" is probably equivalent to actual or constructive notice outside the register.

Settlement estate duty is merely a further estate duty: Finance Act, 1894, s. 5 (1).

It seems that "registered purchaser" here includes a registered chargee: *see* L. T. A., 1875, s. 83 (8). The chargee is a purchaser to the extent of the money advanced, though no estate in the land passes by the charge. If he sells under his power of sale the land will be freed; if he forecloses, it may be taken that full consideration has been given, and the land ought likewise to be freed.

There is more reason to doubt whether the expression includes a mortgagee by deposit where notice of the deposit is entered on the register; it is conceived, however, that the protection of the section will be held to cover mortgages by deposit, as s. 8, last paragraph, *supra*, clearly shows that the intention is that intending mortgagees should be able to rely on the register. The question is, does the entry of notice of deposit in the Charges Register constitute a sufficient registration for the purposes of this section? The fact that the notice is entered in the Charges and not in the Proprietorship Register as an ordinary caution (L. T. R., 1898, r. 6) seems to show that the entry is sufficient.

As to inquiries being limited to twelve years back with respect to past succession duty, *see* Customs, &c. Act, 1889, s. 12.

Where, in the case of a possessory title, the abstract of title shows that the first registered proprietor was tenant for life, any release off the register by the tenant for life to the remainderman is part of that title, and must be abstracted, inasmuch as a sale might afterwards have been effected by the remainderman off the register, the title of the purchaser being completed by the registered proprietor executing a transfer after removal of the restrictions and inhibition.

There is nothing to make such a sale equivalent to a sale under the Settled Land Acts, so as to free the land from succession duty, and a registered purchaser would take subject thereto under sub-s. (3) (b), *supra*.

As to estate duty, *see Re Earl Cowley*, 1898, 1 Q. B. 355; *A.-G. v. Beech*, 1898, 2 Q. B. 147; *W. N.*, 1898, 166 (13).

SS. 13 (3),
14 (1).

SUCCESSION
AND ESTATE
DUTY.

Exchange.

Extraneous
notice.

Settlement
estate duty.

"Registered
purchaser."

Mortgagee by
deposit.

Release of
life estate.

14.—(1.) So much of section eighty-three of the principal Act as prohibits the registration of undivided shares,

Repeal in
part of
38 & 39 Vict.
c. 87, s. 83.

SS. 14 (1, 2),
15 (1).

UNDIVIDED
SHARES; CO-
PROPRIETORS;
DESCRIPTION
OF LAND.

and limits the number of co-proprietors, and relates to the description, boundaries, and extent, and alteration of the description of registered land is repealed.

As to transfers to tenants in common, *see* Form 14 and note thereto.

This sub-s. enables the registration of tenants in common.

Severance of
joint tenancy
on the
register.

Land includes an undivided share (s. 24, *infra*), so that persons who have been improperly registered as joint tenants can now require the registrar to register the proprietors as tenants in common in the shares to which they are entitled: L. T. R., 1898, rr. 15, 101.

See, also, as to joint tenants, *ib.*, rr. 185—187.

Query, power
to remove
share of land
in compulsory
district from
register.

The compulsory provisions of the Act do not apply to undivided shares (s. 24, *infra*); but whether registered land in a compulsory district may be removed from register when held in undivided shares, *query*. There is no express power: *see* s. 17, *infra*.

Consolidation
and division
of heads of
title otherwise
than on sale.

It is conceived that several titles may, at any time be consolidated into one, and that one title may be subdivided into several titles, *e.g.*, for the purposes of a sale in lots: L. T. R., 1898, r. 276. Lands included in more than one title may be included in one disposition: *ib.*, r. 151.

Alteration of
description.

As to alteration of description of registered land, *see* L. T. R., 1898, rr. 15, 16, 219, 220.

(2.) Registered land shall be described in the prescribed manner by means of the ordnance map, together with such further verbal particulars (if any) as the applicant for registration may desire, and the registrar, or the Court, if the applicant prefers, may approve, regard being had to ready identification of parcels, correct description of boundaries, and, as far as may be, uniformity of practice.

Description
of registered
land.

As to description of registered land, *see* L. T. R., 1898, rr. 209—221, *infra*.

"Ordnance Map:" *see* Interpretation Act, 1889, s. 25.

Provisions as
to land held
by incum-
bents of
benefices.

15.—(1.) Where the incumbent of a benefice and his successors are the registered proprietors of land—

(i.) No disposition thereof shall be registered unless a certificate in the prescribed form shall be obtained—

Incumbents,
how
registered.

See L. T. R., 1898, rr. 98—100; 197—199, *infra*.

It is conceived that the name of the incumbent will not be entered on the register, a mere description of the corporation sole (*e.g.*, the

vicar of the parish of X. and his successors) being sufficient; no alteration would then be required on each presentation.

For inhibition to be entered, where the incumbent of a benefice is registered, *see* L. T. R., 1898, Form 59. It would have been better if a restriction against mortgages by deposit had been substituted for the inhibition (sub-s. (ii), *infra*), as the latter creates difficulties on completion of a sale: s. 16, *infra*, note.

S. 15 (1, 2, 3, 4).

INCUMBENTS
OF BENEFICES.

Inhibition.

(a) in case of sales under the Parsonages Act, 1838, or the Church Building Act, 1839, or any Acts amending or extending the same respectively, from Queen Anne's Bounty; or

1 & 2 Vict.
c. 23.
2 & 3 Vict.
c. 49.

(b) in case of sales under the Glebe Lands Act, 1888, or any Acts amending or extending the same, from the Board of Agriculture; or

51 & 52 Vict.
c. 20.

(c) in all other cases, from the Ecclesiastical Commissioners.

(ii.) No lien shall be created by deposit of the land certificate, and an inhibition shall be placed on the register and on the land certificate accordingly.

The production of a certificate from any of the above-mentioned bodies shall be a sufficient authority to the registrar to register the disposition in question, and it shall be the duty of the proper body to grant such certificate in all cases in which the facts admit thereof.

(2.) On the registration of the incumbent of a benefice and his successors as the proprietors of registered land, if it shall be certified by Queen Anne's Bounty, or shall otherwise appear, that such land was originally purchased by Queen Anne's Bounty or was otherwise appropriated or annexed by or with the consent or the concurrence of Queen Anne's Bounty to the benefice for the augmentation thereof, the registrar shall enter a note to that effect on the register.

(3.) Where the incumbent of a benefice is entitled to indemnity under the provisions of this Act, the money shall be paid to Queen Anne's Bounty and appropriated by them to the benefice.

(4.) The term "benefice" in this section shall comprehend all rectories with cure of souls, vicarages, perpetual

S. 15 (4).
INCUMBENTS
OF BENEFICES.

curacies, donatives, endowed public chapels and parochial chapelries, and chapelries or districts belonging, or reputed to belong, or annexed, or reputed to be annexed, to any church or chapel.

Sales
under the
Parsonages
Act, 1838,

The Parsonages Act, 1838 (1 & 2 Vict. c. 23), empowers (s. 7) the incumbent to sell the residence, house, gardens, orchard and appurtenances of the benefice, if inconveniently situated, or if there are other good and sufficient reasons.

Land contiguous to the residence, &c., not exceeding twelve acres, may be sold with it: s. 7; also 1 & 2 Vict. c. 29.

The consents of the ordinary, the patron, and the archbishop are necessary, and must be testified by their execution of the conveyance to the purchaser: *ib.* The conveyance to the purchaser must be by deed (*ib.*), and the purchase-money is to be paid to the Governors of Queen Anne's Bounty, whose receipt is a sufficient discharge: s. 8.

Sales under
Church
Building Act,
1839.

The Church Building Act, 1839 (2 & 3 Vict. c. 49), empowers (s. 15) the incumbent to sell any hereditaments which have been annexed to any benefice by, or with the concurrence of the Governors of Queen Anne's Bounty, if such hereditaments are situated outside the parish of the benefice, or outside an adjoining parish or parishes.

The consents of the governors, the ordinary and the patron, are required, and must be testified as above mentioned: *ib.*

The like power of sale (s. 16) is given with respect to lands situated inside the parish, if special circumstances exist. In this case, the consent of the archbishop is also required, and is to be testified as before mentioned.

The power of sale under the Parsonages Act is extended to buildings belonging to the benefice which are not worth repairing: s. 17.

The purchase-money is in all cases to be paid to the Governors of Queen Anne's Bounty: s. 18.

Sales under
the Glebe
Lands Act,
1888.

The Glebe Lands Act, 1888 (51 & 52 Vict. c. 20), empowers (s. 34) the incumbent of any benefice to sell the glebe with the consent of the Land Commissioners (now the Board of Agriculture: Board of Agriculture Act, 1889, s. 2 (1) (b)).

Notices in the prescribed form must be given to the bishop of the diocese and the patron of the benefice (s. 2), who may object to the sale: s. 3. The objection may be overruled: s. 3. There is, however, a restriction on the sale of the parsonage-house, and certain land appurtenant thereto: *ib.* The purchase-money is to be paid to the Board of Agriculture: s. 4.

In the case of a sale under the Glebe Lands Act, 1888, the receipt of the Board of Agriculture for the purchase-money is to be deemed a certificate in accordance with this section: L. T. R., 1898, r. 198.

There is also power to sell glebe lands under 5 & 6 Vict. c. 108; 21 & 22 Vict. c. 57; 28 & 29 Vict. c. 57. SS. 15 (4),
16 (1).

The effect of this section seems to be that a purchaser of registered land from an incumbent need not, if a certificate has been duly obtained under sub-s. (1) (i), *supra*, inquire whether the sale is authorized under the Acts above mentioned, or any of them, nor is he concerned to inquire whether the proper consents have been obtained, and the consenting parties need not execute any conveyance to him. INCUMBENTS
OF BENEFICES.
—
Sale of glebe
lands under
other Acts.
Effect of
section.

It will be the duty of the authority issuing the certificate to obtain the proper consents, so that the rights of the patron and other persons interested need not be protected by a caution. As to the power for the Ecclesiastical Commissioners to obtain cautions and inhibitions, *see* L. T. R., 1898, r. 193.

Inasmuch as no lien can be created by deposit of the certificate (sub-s. (1) (ii)), it will be best to leave the certificate at the registry: *see* s. 8 (4) (i), (ii), (iii), *supra*. Custody of
certificate of
church lands.

"Queen Anne's Bounty" means the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy: Interpretation Act, 1889, s. 12 (16). Queen Anne's
Bounty.

The Acts regulating Queen Anne's Bounty are: 2 & 3 Ann, c. 20; 1 Geo. 1, st. 2, c. 10; 1 & 2 Vict. c. 20; 2 & 3 Vict. c. 49; 3 & 4 Vict. c. 20; 9 & 10 Vict. c. 88; and 28 & 29 Vict. c. 69. Acts
regulating.

As to the indemnity which will be paid (sub-s. (3)) to Queen Anne's Bounty, *see* s. 7, *supra*. Indemnity.

"Chapel" means a Church of England Chapel only: Wharton's Law Lexicon, 9th ed. p. 127. Chapel.

16.—(1.) A purchaser of registered land shall not require any evidence of title, except— Provisions as
to vendor and
purchaser
on sales.

- (i.) the evidence to be obtained from an inspection of the register or of a certified copy of, or extract from, the register;
- (ii.) a statutory declaration as to the existence or otherwise of matters which are declared by section eighteen of the principal Act and by this Act not to be incumbrances; 38 & 39 Vict.
c. 87.
- (iii.) if the proprietor of the land is registered with an absolute title, and there are incumbrances entered on the register as subsisting at the first registration of the land, either evidence of the title to those incumbrances, or evidence of their discharge from the register;

S. 16 (1, 2, 3).

VENDORS AND
PURCHASERS.

(iv.) where the proprietor of the land is registered with a qualified title, the same evidence as above provided in the case of absolute title, and such evidence as to any estate, right, or interest excluded from the effect of the registration as a purchaser would be entitled to if the land were unregistered;

(v.) if the land is registered with a possessory title, such evidence of the title subsisting or capable of arising at the first registration of the land as the purchaser would be entitled to if the land were unregistered.

(2.) Where the vendor of registered land is not himself registered as proprietor of the land or of a charge giving a power of sale over the land, he shall, at the request of the purchaser and at his own expense, and notwithstanding any stipulation to the contrary, either procure the registration of himself as proprietor of the land or of the charge, as the case may be, or procure a transfer from the registered proprietor to the purchaser.

Transfers by
persons
entitled to be
registered.
Paramount
titles.

This sub-s. must be read with s. 9 (6), *supra*, enabling the person entitled to be registered to transfer without being registered.

As to the power for the registrar to give effect to a paramount title, see L. T. R., 1898, r. 101.

44 & 45 Vict.
c. 41.

(3.) In the absence of special stipulation, a vendor of land registered with an absolute title shall not be required to enter into any covenant for title, and a vendor of land registered with a possessory or qualified title shall only be required to covenant against estates and interests excluded from the effect of registration, and the implied covenants under section seven of the Conveyancing and Law of Property Act, 1881, shall be construed accordingly.

Vendors and
purchasers of
registered
land.

In the case of freeholds registered with an absolute title, having regard to the effect of a transfer for value (L. T. A., 1875, s. 30), a vendor of registered land need only show that he is the registered proprietor, and that his power of disposition is not fettered.

Abstracts of
title; absolute
titles.

The abstract of title will accordingly consist of copies of the land certificate and any entries in the register made since the last noting

up thereof, and the purchaser must verify the abstract by obtaining production of the certificate and by inspection of the register, for which he will require the written consent of the vendor: L. T. R., 1898, r. 222.

S. 16 (3).

VENDORS AND
PURCHASERS.

If there are any incumbrances which were entered on first registration, then the title to these incumbrances must be investigated off the register, unless they have been registered (L. T. R., 1898, rr. 121—124, 180), and the registrar must be satisfied that they are discharged: L. T. R., 1898, r. 179.

Incumbrances
prior to first
registration.

It is conceived that Form 45 may be varied so as to enable a mortgagee, whose incumbrance is merely noted on the register, to join to convey the legal estate and release the debt.

In the case of freeholds registered with a possessory title the vendor must deliver the same abstract as he would do if the title were absolute, and in addition an abstract of the title to paramount estates, rights and interests, which must be got in: L. T. A., 1875, ss. 8, 32. Under an open contract the purchaser may require the abstract of title to paramount estates in freeholds to extend for forty years back: V. & P. A., s. 1. The contract should, however, state the date of commencement.

Abstracts of
title; posses-
sory titles.

The abstract of title must show the devolution of paramount estates to a registered proprietor: L. T. A., 1875, s. 8, and note thereto. The purchaser must ascertain that the person to whom title is deduced by the abstract was a registered proprietor of the land he is purchasing by inspection of the back entries in the register: L. T. R., 1898, r. 222.

Abstract must
show devolu-
tion of
paramount
estates to a
proprietor.

Leaseholds registered with an absolute or possessory title stand on the same footing as freeholds registered with the like titles: L. T. R., 1898, rr. 92, 93.

Leaseholds.

The abstract of title to paramount estates will commence with the lease or underlease: V. & P. A., s. 2, r. 1; C. A., 1881, s. 3(1).

As to the destruction of any legal estate which supported an incumbrance originally entered on the register (sub-s. (1) (iii), *supra*), by a transfer for value after the entry is cancelled, see L. T. A., 1875, s. 30, and note.

Destruction of
legal estate off
the register
by transfer
for value.

This section supplies statutory conditions of sale for registered land, but there is nothing in the Acts, except as regards sub-s. (2), to prevent their exclusion by the contract for sale.

Section may
be excluded
by contract
for sale.

Sub-s. (3) should be qualified by the contract, as a purchaser is entitled to covenants for title as regards liabilities declared not to be incumbrances by L. T. A., 1875, s. 18, as amended: see also L. T. R., 1898, r. 148. Covenants for title must be construed with reference to the title expressed to be conveyed, and not merely to the title shown to a purchaser (*Page v. Mid. R. Co.*, 1894, 1 Ch. 11, 19); but there are two difficulties with regard to registered land. First, if Form 14, which does not contain the words "in fee simple," is used, then, in order to render the covenants

Covenants
for title.

- S. 16 (3). applicable to the whole fee, the words "in fee simple" must be deemed to be introduced into the transfer by virtue of L. T. A., 1875, s. 30. If s. 30 has to be read into the transfer, then s. 30 (2), which excepts the liabilities (L. T. A., 1875, s. 18, as amended), must also, it seems, be read into the transfer. Secondly, if the form of transfer is modified for the purpose of passing the fee simple off the register before registration of the purchaser (*see* note to L. T. R., 1898, r. 79), then the purchaser will require the covenants to apply to matters included, as well as excluded, from the effect of registration.
- VENDORS AND PURCHASERS.**
- Form of transfer.** For suggested variation in form of transfer, *see* note to L. T. R., 1898, r. 79.
- Expense of statutory declaration.** The expense of the statutory declaration mentioned in sub-s. (1) (ii) falls on the purchaser (C. A., 1881, s. 3 (6)), unless otherwise provided for by the contract.
- Separate conveyance not required as well as transfer except in special cases.** In the case of an absolute title a purchaser will not require a conveyance in addition to a registered transfer, except in special cases, *e.g.*, where the land is to be conveyed to the uses of a settlement (*see* s. 6 (3), *supra*), but it will be best, where the legal estate is vested in the proprietor, to pass that estate off the register by means of proper additions to the transfer: L. T. R., 1898, r. 79, note.
- Draft transfer to be submitted to registrar.** In all but the simplest cases the draft of the transfer to the purchaser should be submitted for the approval of the registrar: L. T. R., 1898, rr. 147, 276.
- Receipt.** The prescribed forms of transfer do not contain any receipt clause, but it is conceived that the forms may be modified by the insertion of one. The point is of importance, inasmuch as a purchaser may pay his purchase-money to a solicitor who produces a deed containing or having endorsed a proper receipt: C. A., 1881, s. 56. Further, a trustee may permit his solicitor to have the custody of a deed containing such a receipt: T. A., 1893, s. 17.
- Cautions or inhibitions.** Where a caution or inhibition is disclosed by the abstract, or appears from inspection of the register, the purchaser should make a requisition that it be removed by the vendor before completion; or that the cautioner should join in the transfer: L. T. R., 1898, r. 155.
- Restrictions.** If there is a restriction on the register, its terms must be complied with.
- Land certificate and title deeds.** On completion, the land certificate should be handed over, and also, except where an acknowledgment is given, such title deeds (whether the title is possessory or absolute) relating to the title prior to registration as are in the custody of the vendor: L. T. R., 1898, r. 38.
- Completion.** A purchaser does not obtain title to the fee simple till registration of the transfer to him: L. T. A., 1875, s. 29. It will, however, be practically safe for him to part with his money in exchange for the

deed of transfer and the vendor's certificate deposited to secure the purchase-money till registration (s. 8, last paragraph, *supra*), together with notice of the deposit (L. T. R., 1898, rr. 200—202); and it is conceived that this will be the usual practice. The transfer cannot be registered, unless the execution is admitted by the transferor, till after the expiration of three clear days from the time when notice of its lodgment at the registry is despatched to the transferor (*ib.*, r. 161), hence it is necessary for the purchaser who has paid his purchase-money to be protected in the meantime.

S. 16 (3).

VENDORS AND
PURCHASERS.

When there is a sale in lots the proper course will be for the vendor before completion to obtain a separate certificate as to each lot sold.

The deposit of the certificate will prevent registered dispositions being entered (s. 8, *supra*), but does not affect the lodgment of cautions or notices of incumbrances. If a caution is lodged, before registration of the purchaser, to protect an equity having priority to the purchaser's contract, then it is submitted that if the purchaser obtained the custody of the certificate without notice of the caution, his lien for the purchase-money would override the cautioner's claim.

In the case of land subject to registered charges, the purchaser can pay the amount due to a chargee out of the purchase-money before completion, in exchange for the charge certificate and a duly executed discharge: Forms 43 and 45. If, however, the charge related to other land it would, in strictness, be necessary to have a new certificate of charge made out as to the land sold, but in practice, it is conceived, the risk will be taken if the chargee deposits his certificate at the registry.

Completion
where there
is a registered
charge.

In cases where the certificate cannot be handed over by way of deposit, *e.g.*, where there is an inhibition against mortgages by deposit (though it must be produced for registration), and in cases where no certificate has been issued, the proper course would seem to be either for the purchaser to take a conveyance of the legal estate off the register, or for the vendor to obtain the purchaser's registration at the purchaser's expense before completion.

Proper course
where certifi-
cate cannot be
handed over
or where
there is no
certificate.

In ordinary cases it will not be necessary for the purchaser to lodge a caution to protect his contract and deposit. For though the vendor may by registered disposition for value defeat the contract, yet a vendor of unregistered land may now convey the legal estate to another purchaser without notice of the contract and thus defeat it. Hence a purchaser will, it is conceived, not incur the expense (10s.) of a caution unless he cannot obtain a lien by deposit, and is paying his purchase-money on the faith of a conveyance of the legal estate off the register. Moreover, notice of the deposit of the certificate only costs 1s. and operates as a caution, but this cannot be entered till the certificate is deposited.

Whether
caution
should be
lodged to pro-
tect contract.

SS. 16 (3),
17 (1, 2, 3).

**VENDORS AND
PURCHASERS.**

**Acknowledg-
ment and
undertaking
as to
documents
to be taken
separately.
Death duties
and searches.**

An acknowledgment and undertaking as to documents (if any) relating to the title prior to registration which are retained by the vendor may be given in any case where it is required by a separate writing under a 6d. agreement stamp, and should not be inserted in the deed of transfer, which will be retained in the registry: L. T. R., 1898, r. 162.

In the case of an absolute title a purchaser of registered land takes free from death duties (*see* s. 13, *supra*), and need make no searches outside the register (L. T. A., 1875, ss. 30, 31, 32); but in the case of a possessory title a purchaser takes, subject to death duties, the liability to which is disclosed by the abstract of the title to estates paramount to the fee simple conferred by first registration (*see* s. 13, *supra*), and must, as to liabilities capable of arising before first registration, make the same searches as would be necessary in the case of unregistered land.

**Sale by
chargee.
Transfer by
proprietor
and chargee.**

As to a sale by a chargee in exercise of his power of sale, *see* L. T. A., 1897, ss. 8 (4), 9 (1), and L. T. R., 1898, r. 90, note.

For form of transfer by registered proprietor and chargee, *see* L. T. R., 1898, Form 45.

**Purchase
money
remaining on
mortgage.**

As to the purchase-money remaining on mortgage, *see* L. T. R., 1898, r. 78.

**Exchange
and partition.**

As to exchange and partition, *see* *ib.*, rr. 103—105.

**Sale of settled
land.**

As to sales of settled land, *see* L. T. A., 1897, s. 6 (2), and note.

**Power to
remove land
from the
register.**

17.—(1.) The registered proprietor of land not situated in a district where the registration of title is compulsory, may, with the consent of the other persons (if any) for the time being appearing by the register to be interested therein, and on delivering up the land certificate or office copy of the registered lease and certificates of charge (if any), remove the land from the register. *

(2.) After land is removed from the register no further entries shall be made respecting it, and inspection of the register may be made and office copies of the entries therein may be issued, subject to such regulations as may be prescribed.

(3.) If the land so removed from the register is situate within the jurisdiction of the Middlesex or Yorkshire registries named in section one hundred and twenty-seven of the principal Act, it shall again be subject to such jurisdiction as from the date of the removal.

38 & 39 Vict.
c. 87.

**Inspection of
register after
land removed
therefrom.**

When any land has been removed from the register, the last registered proprietor of the land or of any charge thereon, may

inspect the register for a period of two years: L. T. R., 1898, r. 230. After two years there is to be no inspection, except by order of the registrar: *ib.*

As to the jurisdiction of the Deeds Registries, see L. T. A., 1875, s. 127, as amended; L. T. R., 1898, rr. 24, 122.

Care must be taken to obtain the legal estate on removing land from the register. For this purpose, it seems that the title must be investigated off the register, back to the last transfer for value.

Where land is removed after the death of a tenant for life, who was registered before 1898, and died after 1897, the legal estate may perhaps be vested in his personal representatives: see notes to ss. 1, 6 (8), *supra*.

18. The principal Act shall be further amended in regard to its minor details in the manner set forth in the First Schedule hereto.

The amendments are set out in the notes to the L. T. A., 1875, *supra*.

19.—(1.) Where a county council apply in pursuance of section ten of the Small Holdings Act, 1892, for registration as proprietors of land, they may be registered as proprietors of that land, with any such title as is authorised by the principal Act.

(2.) Where a county council, after having been so registered, transfer any such land to a purchaser of a small holding, the purchaser shall be registered as proprietor of the land with an absolute title, subject only to such incumbrances as may be created under the Small Holdings Act, 1892, and in any such case the remedy of any person claiming by title paramount to the county council in respect either of title or incumbrances shall be in damages only, and such damages shall be recoverable against the county council.

Section 10 of the Small Holdings Act, 1892, is as follows:—

- (1.) When a county council have purchased land under this Act, they shall apply for their registration as proprietors thereof, with an absolute title under the Land Transfer Act, 1875.
- (2.) Rules under the Land Transfer Act, 1875, may—
 - (a) adapt that Act to the registration of small holdings, with such modifications as appear to be required; and

SS. 17 (3), 18, 19 (1, 2).

AMENDMENTS.

Deeds registries.
Legal estate.

Minor amendments in Schedule I.

Registration of small holdings.
55 & 56 Vict. c. 31.

SS. 19 (2), 20
(1, 2).

REGISTRATION.

(b) on the application and at the expense of a county council provide, by the appointment of local agents or otherwise, for carrying into effect the objects of this section.

For rules made in pursuance of the Small Holdings Act, 1892, see Chap. V., *infra*.

Titles
paramount.

As to the titles paramount, see L. T. A., 1875, ss. 95, 100; L. T. A., 1897, s. 7; L. T. R., 1898, r. 101.

PART III.

Compulsory Registration and Insurance Fund.

Power to
require regis-
tration of
title on sale.

20.—(1.) Her Majesty the Queen may, by Order in Council, declare, as respects any county or part of a county mentioned or defined in the Order, that, on and after a day specified in the Order, registration of title to land is to be compulsory on sale, and thereupon a person shall not, under any conveyance on sale executed on or after the day so specified, acquire the legal estate in any freehold land in that county, or part of a county, unless or until he is registered as proprietor of the land.

38 & 39 Vict.
c. 87.

(2.) In this section the expression “conveyance on sale” means an instrument executed on sale by virtue whereof there is conferred or completed a title under which an application for registration as first proprietor of land may be made under the principal Act.

“Instrument” must be read as including more than one instrument if necessary: see Interpretation Act, 1889.

The expressions “assignment on sale,” and “grant of a lease or underlease,” are given a corresponding meaning to “conveyance on sale” in this section: see L. T. R., 1898, r. 60, and note thereto.

Compulsory
provisions
respecting
leaseholds.
Leaseholds.

For compulsory provisions respecting leases and sub-leases, see L. T. R., 1898, rr. 58, 59.

For the Orders in Council, under this section, see Chap. V., *infra*.

The order extends to sales of leaseholds, and to grants of leases and underleases: L. T. R., 1898, r. 58.

Costs of
railway
company.

Where a railway company purchase land, the title to which ought to have been registered by a prior owner, it is conceived that the company must bear the cost of registration as “costs of conveyance,” under the Lands Clauses Consolidation Act, 1845, s. 82: *Re Belfast and Northern Counties Railway Company*, 1895, Ch. Ir., 297.

(3.) The title with which a proprietor of freehold land is registered in pursuance of this section shall be not less than a possessory title; but nothing in this section shall prevent any person from being registered with any other title if the registrar is satisfied of his title.

S. 20 (3, 4, 5, 6, 7, 8).

COMPULSORY
REGISTRATION.

As to meaning of possessory title, *see* L. T. A., 1875, ss. 6, 7, 8; L. T. R., 1898, r. 48.

(4.) It shall be lawful for her Majesty in Council to revoke or vary any Order made under this section.

(5.) In the case of every Order proposed to be made under this section, notice shall, six months before the Order is made, be given to the council of the county to which such Order is proposed to be applied. A draft of the proposed Order, together with the name of at least one place within or conveniently near to the county where a district registry office will be established, shall accompany the notice, and shall also be published in the Gazette.

As to notice under this sub-s., *see* Interpretation Act, 1889, s. 37.

(6.) If within three months after receipt of the draft the county council, at a meeting specially called for the purpose, at which two-thirds of the whole number of the members shall be present, resolve, and communicate to the Privy Council their resolution, that in their opinion compulsory registration of title would not be desirable in their county, the Order shall not be made.

(7.) The first Order made under this section shall not affect more than one county.

Sub-ss. (6), *supra*, and (8), *infra*, throw the responsibility of putting the compulsory provisions into force on the county councils.

As to the meaning of county, *see* sub-s. (11), *infra*, and note thereto.

Responsibility
of putting
compulsory
provisions in
force, thrown
on County
Councils.
Meaning of
county.

(8.) Except as to a county or part of a county which shall have signified through the county council of such county, pursuant to a resolution of such council passed at a meeting at which two-thirds of the whole number of the members shall be present, its desire that registration of title shall be compulsorily applied to it, no further Order shall be made under this section, and in any case no

S. 20 (8, 9,
10, 11).

COMPULSORY
REGISTRATION.

further Order shall be made under this section until the expiration of three years from the making of the first Order. Provided that in the case of an Order made under this sub-section the provisions of sub-section (6) shall not apply.

(9.) Every Order of Council made under this section shall, within thirty days from the date thereof, if Parliament be then sitting, or within twenty days from the commencement of the next session, if Parliament be not sitting, be laid on the table of both Houses of Parliament, and if within forty days of any Order being so laid an Address in either House disapproving of such Order be carried, such Order shall be void and of no effect.

(10.) Any Order made under this section shall be made with due regard to the utilisation (if practicable) of any land registry existing in the county to which compulsory registration is proposed to be applied or in any adjoining county.

51 & 52 Vict.
c. 41.

(11.) For the purposes of this section the word county shall have the same meaning as in the Local Government Act, 1888, and shall include a county borough; and the word county council shall include the council of such borough.

Local Govern-
ment Act,
1888, with
reference to
"county."

"Adminis-
trative
counties."

England and Wales are, by the Local Government Act, 1888, divided into local government areas called "administrative counties."

The "administrative counties" are defined as the areas for which county councils are to be elected, and though the expression is not to include "county boroughs" as used in the Act (s. 100), they, in effect, consist of:—

- (1) The geographical counties (except certain counties which are divided by the Act).
- (2) The administrative county of London.
- (3) The county boroughs.

Administra-
tive county
of London.
County of
London does
not include
the city.

The "administrative county of London" includes the city of London.

The "county of London," which consists of part of what was formerly part of Middlesex, Surrey and Kent (L. G. A., 1888, s. 40), does not include the city of London.

The "county boroughs" are the boroughs mentioned in the Third Schedule to the L. G. A., 1888, each of which either had, on

the date mentioned in the Act, the population mentioned in the Act or was a county of itself.

The following cities and towns, though counties of themselves, are not mentioned in the Third Schedule to the Local Government Act, 1888, namely:—(1) City of Lichfield; (2) town of Carmarthen; (3) town of Haverfordwest; and (4) town of Poole.

As regards the Local Government Act, 1888, these four cities or towns are treated as any other town having the same population, but the Act does not appear to deprive them, except for administrative purposes, of the privilege of being counties by themselves.

In the Local Government Act, 1888 (*see s. 100*), the expression "county," if not inconsistent with the context, does not include a county of a city or county of a town.

This definition is now, for the purposes of this section, varied so as to include "county boroughs," but not necessarily all cities or towns which are counties of themselves, unless they are also "county boroughs."

In this sub-s., if strictly construed, "county" cannot mean "administrative county," inasmuch as the two expressions are separately defined in the L. G. A., 1888: *see s. 100*.

The result of the strict interpretation seems to be as follows:—

- (i) Registration cannot be made compulsory in the City of London, which is a county of itself, but is not a "county borough," nor in any of the four other cities or towns above mentioned.
- (ii) If the first order had been applied to a "county borough" which is also a county of itself, then the order could not have been extended to the geographical county in which that borough was situated, and *vice versa*.

The following "county boroughs" appear to be counties of themselves, namely:—

- | | |
|-----------------|---------------------------|
| (1) Bristol. | (8) Worcester. |
| (2) Canterbury. | (9) York. |
| (3) Chester. | (10) Kingston-upon-Hull. |
| (4) Exeter. | (11) Newcastle-upon-Tyne. |
| (5) Gloucester. | (12) Nottingham. |
| (6) Lincoln. | (13) Southampton. |
| (7) Norwich. | |

There may be some doubt as to whether Oxford and Berwick-on-Tweed are counties of themselves; they have their own sheriffs, but Oxford is now a county borough under L. G. A., 1888, s. 54 (1) (d).

Coventry is no longer a county: 5 & 6 Vict. c. 110, s. 1.

It is submitted, however, that "county" should, notwithstanding the above reasons to the contrary, be read as "administrative county," on the ground, first, that "administrative county" is

S. 20 (11).

COMPULSORY REGISTRATION.

Four cities or towns being counties of themselves, but not being county boroughs.

Meaning of
"county"
in L. G. A.

How
definition
varied by
L. T. A.,
1897.

"County"
in L. T. A.,
1897, s. 20.

Effect of sub-
s. 11 if
strictly con-
strued.

"County
boroughs"
being counties
of themselves.

"County"
should be
read as "ad-
ministrative
county."

SS. 20 (11, 12), defined (L. G. A., 1888, s. 100) as not, except where expressly mentioned, including a "county borough"; secondly, that sub-s. (11) 21 (1, 2, 3).
 COMPULSORY REGISTRATION. (*supra*) expressly includes "county borough" (and *see* sub-ss. (5) and (6), *supra*); and, thirdly, that "county" appears to be sometimes used in the L. G. A., 1888, when "administrative county" is intended.

(12.)—(i.) In the event of any portion of a county or part of a county as regards which an Order has been made under this section being included in another county or in a county borough as regards which no Order has been made under this section, such Order shall cease to be in force within such included portion of the county.

(ii.) In the event of any portion of a county or part of a county as regards which no Order has been made under this section being included in another county or in a county borough as regards which an Order has been made under this section, such Order shall apply to such included portion of the county.

Alterations of boundaries of counties or county boroughs. This sub-s. covers the case of subsequent alteration in boundaries of counties or county boroughs.

Insurance fund for providing indemnity.

21.—(1.) For the purpose of providing indemnity payable under this Act, there shall be established an insurance fund to be raised by setting apart at the end of each financial year such portion of the receipts from fees taken in the land registry as the Lord Chancellor and the Treasury shall by Order determine.

(2.) The insurance fund shall be invested in such names and manner as the Treasury from time to time direct.

(3.) If the insurance fund is at any time insufficient to pay indemnity for any loss chargeable thereon, the deficiency shall be charged on and paid out of the Consolidated Fund of the United Kingdom, or the growing produce thereof; but any sum so paid out of the Consolidated Fund, or the growing produce thereof, shall be repaid out of the money subsequently standing to the credit of the insurance fund.

(4.) Accounts of the fund shall be kept, and be audited as public accounts, in accordance with such regulations as the Treasury from time to time make.

SS. 21 (4),
22 (1, 2, 3, 4).

INSURANCE
FUND.

Whether any sum repaid to the Consolidated Fund is to carry interest is not stated.

PART IV.

Miscellaneous.

22.—(1.) Regulations may be made by the Lord Chancellor, under section one hundred and six of the principal Act, altering or adding to the official styles of the registrar and other officers of the registry, for the purposes of this Act.

Rules and fee
orders.

(2.) General rules under section one hundred and eleven of the principal Act shall be made by the Lord Chancellor with the advice and assistance of the registrar, a judge of the Chancery Division of the High Court to be chosen by the judges of that division, and three other persons, one to be chosen by the General Council of the Bar, one by the Board of Agriculture, and one by the Council of the Incorporated Law Society.

For the names of the Rule Committee, *see* Chap. IV., *infra*.

(3.) Orders under section one hundred and twelve and one hundred and twenty-two of the principal Act shall be made by the Lord Chancellor with the advice and assistance of the same persons, and with the concurrence of the Treasury.

Section 112 relates to fee orders, and s. 122 to application of rules and orders to district registries.

(4.) The fee orders relating and incidental to registration of title shall be arranged from time to time so as to produce an annual amount sufficient to discharge the salaries and other expenses (including the annual contri-

S. 22 (4, 5, 6). bution to the insurance fund) incidental to the working of the principal Act, and this Act, and no more.

**RULES AND
ORDERS.**

38 & 39 Vict.
c. 87.

For fee order, *see* Chap. V., *infra*.

(5.) Subject to any alterations that may be made in accordance with sections one hundred and twelve and one hundred and twenty-two of the principal Act and this section, the fees to be charged in districts where registration of title is compulsory shall, as regards the matters mentioned in the Second Schedule hereto, be as therein set forth.

For fee order, *see* Chap. V., *infra*.

(6.) Provision may be made by general rules, under section one hundred and eleven of the principal Act, as amended by this Act, for carrying this Act into effect, and in particular for the following purposes:—

Section 111 is the general rule-making section. “As amended:” *see* sub-s. 2, *supra*.

(a.) For carrying out the provisions of this Act with respect to compulsory registration;

See L. T. R., 1898, rr. 58—60.

(b.) For adapting to the registration of proprietors of leasehold land the provisions of the principal Act, as to absolute and possessory titles, and as to land certificates;

See L. T. R., 1898, rr. 43—57; 204—208.

(c.) For adapting to sub-mortgages and to incumbrances prior to registration the provisions of the principal Act with regard to charges;

See L. T. R., 1898, rr. 121—126.

(d.) For the conduct of official searches against cautions, inhibitions, and such matters of a like nature as may be prescribed, and for enabling the registered

proprietor to apply for such searches by telegraph, and for returning the replies in like manner to him or to such other person as he may direct ;

S. 22 (6, 7).
RULES AND
ORDERS.

See L. T. R., 1898, rr. 224—228.

- (e.) For enabling cautions to be entered against the registration of possessory and qualified titles as qualified or absolute ;

See L. T. R., 1898, r. 188 ; Form 53.

- (f.) For enabling a mortgagee by deposit to give notice to the registrar by registered letter or otherwise of the deposit with him of the land certificate, office copy of the registered lease, or certificate of charge. Provided that the fee for the entry of any such notice shall not exceed one shilling ;

See L. T. R., 1898, rr. 200—202 ; also Fee Order, 1898, Chap. V., *infra*.

- (g.) For applying to the grant of leases and dealings with leasehold land the provisions of this Act with respect to compulsory registration ;

See L. T. R., 1898, rr. 58—60.

- (h.) For allowing the insertion, inserting in the register, and in land certificates, of the price paid or value declared on first registrations, transfers, and transmissions of land ; and

See L. T. R., 1898, rr. 203, 265 ; Forms 1, 2, 3, 5.

- (i.) For regulating any such matters as are authorised by this Act to be prescribed.

(7.) Provided that nothing in the Rules under the said section shall extend to allow the inspection of any entry in the register, except by or under the authority of some person interested in the land or charge to which the entry refers.

See L. T. R., 1898, rr. 222—230.

SS. 22 (8),
23 (1, 2, 3, 4).

**RULES AND
ORDERS.**

(8.) Provision may be made by general orders under section one hundred and eighteen of the principal Act for modifying the provisions of that Act with respect to the formation and constitution of district registries, and for providing the mode in which district registrars are to be remunerated; but nothing in any such order shall affect the provisions as to qualification contained in section one hundred and nineteen of the principal Act.

No provisions as to district registries have yet been made: *cf.* Conv. Bill in Appendix, and *see* next section.

Provision for
the Yorkshire
registries of
deeds.

23.—(1.) At any time after the passing of this Act, and subject to the provisions of section twenty of this Act, the Lord Chancellor may enter into an agreement with the county council of any of the three ridings of Yorkshire for the transfer of the business of the local deed registry established in that riding to the office of land registry.

54 & 55 Vict.
c. 64.

(2.) The agreement shall be drawn up in accordance with the principles of sections one, three, and four of the Land Registry (Middlesex Deeds) Act, 1891, which provided for the transfer of the Middlesex registry of deeds to the land registry, and shall, after approval by the Treasury, take effect accordingly.

(3.) The whole of the property, assets, and liabilities of the county council, in relation to the local registry, shall be included in the transfer, and shall be taken over by the State at a price to be specified in or ascertained under the terms of the agreement, but no sum shall be payable for compensation in respect of any future loss of fees consequent upon such transfer.

(4.) Unless and until an agreement as aforesaid is concluded the county council may from time to time, at intervals of five years, in the event of their suffering loss, owing to the business of the local registry being diminished by reason of the principal Act and this Act, apply to the Treasury for compensation, and the Treasury shall award such compensation accordingly.

(5.) The compensation shall be made by the payment of a capital sum to the county fund to be determined in case of dispute by arbitration in the usual way on the basis of the receipts and expenditure in respect of the local registry during the three years previous to the claim being made, and that the county fund shall not be placed in a worse financial position by the operation of the Act.

SS. 23 (5, 6),
24 (1).

YORKSHIRE
REGISTRIES.

(6.) All payments under this section shall be made out of moneys to be provided by Parliament.

24.—(1.) All hereditaments, corporeal and incorporeal, shall be deemed land within the meaning of the principal Act and this Act, except that nothing in this Act shall render compulsory the registration of the title to an incorporeal hereditament, or to mines or minerals apart from the surface, or to a lease having less than forty years to run or two lives yet to fall in, or to an undivided share in land, or to freeholds intermixed and indistinguishable from lands of other tenure, or to corporeal hereditaments parcel of a manor, and included in a sale of the manor as such.

Interpreta-
tion.

The meaning of the word "land" in the Acts will have to be decided with reference to each particular section.

The word "land" in Acts of Parliament passed since 1850 includes messuages, tenements and hereditaments, houses and buildings of any tenure, unless the contrary intention appears: Interpretation Act, 1889, s. 3. This definition, however, is for not very apparent reasons excluded: L. T. A., 1875, s. 4.

Meaning of
the word
"land" in
the Acts.
Statutory
definition of
the word
"land"
excluded.

"Land" in its legal acceptance includes whatever is parcel of the terrestrial globe or is permanently affixed to any such parcel: Challis R. P., 2nd ed. p. 41; Co. Litt., 4a—6a. This meaning is by the section extended to include corporeal and incorporeal hereditaments.

Meaning of
"land" in
its legal
acceptation.

An undivided share in land is a hereditament, and will therefore be included: see, also, s. 14 (1), *supra*.

Undivided
shares.

Hereditaments include chattels real: *Hopewell v. Ackland*, 1 Salk. 239; *Denn v. Moir*, 2 B. & P. 247, 251; *Doe v. Allen*, 8 T. R. 497, 503.

The mention of "lease" in this sub-s. supports the view that the word land must throughout the Acts, except where the contrary

Whether land
in the Act
includes
chattels real.

SS. 24 (1, 2), 25, 26. appears, be construed to include chattels real; and *see* s. 3 (2), *supra*, also L. T. A., 1875, s. 11.

**INTERPRETA-
TION.**

Settled land.
Copyholds,
&c., excluded.
Special here-
ditaments.

As to the meaning of "settled land," *see* note to s. 6 (1), *supra*.

Copyholds, however, and customary freeholds requiring admittance and terms of years subsisting in them, are not to be registered: L. T. A., 1875, ss. 2, 26.

As to special hereditaments, *see* L. T. A., 1875, s. 82; L. T. R., 1898, rr. 61—67.

(2.) In this Act the expression "personal representative" means an executor or administrator.

Meaning of
"personal
representa-
tive."

An executor *de bonis non*, and an administrator during a minority, would be a personal representative within this definition.

As to the powers of an executor of an executor, *see* Wms. Exors., 9th ed. 829—832.

Commence-
ment of Act.

25. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-eight.

Short title
and construc-
tion.

26. This Act may be cited as the Land Transfer Act, 1897, and shall be construed as one with the principal Act, and that Act and this Act may be cited together as the Land Transfer Acts, 1875 and 1897.

See note to the preamble, *supra*; and to s. 8 (last paragraph).

SCHEDULES.

THE FIRST SCHEDULE.

MINOR AMENDMENTS OF THE PRINCIPAL ACT.

The sections of the principal Act mentioned in the first column of this Schedule are repealed or amended to the extent and in the manner set forth in the third column.

1. Section in Principal Act.	2. Subject Matter.	3. Extent of Repeal or Nature of Amendment.
2	Only land of freehold tenure to be registered.	If, at any time, land is found to have been registered with absolute or qualified title contrary to the provisions of this section, the registration shall not be annulled, but shall be deemed an error not capable of rectification under the principal Act, and any person suffering loss thereby shall be indemnified accordingly.
11	Registration of leasehold land.	A sub-lease shall, and a term created for mortgage purposes shall not, be deemed a lease within the meaning of this section.
18	Various rights and liabilities not to be incumbrances.	This section shall include estate duty, liability to repair the chancel of any church, liability in respect of embankments, sea and river walls, and drainage rights, customary rights, public rights, and profits à prendre, and, subject to the provisions of this Act, rights acquired or in course of being acquired under the limitation Acts.
18 (4) (5)	Rights to and in respect of mines and minerals not to be incumbrances.	These sub-sections shall apply only to rights created previously to the registration of the land or the commencement of this Act.
18, last paragraph.	Power for registrar to note on the register the existence of liabilities mentioned in the section.	The power conferred on the registrar shall be exercised in all cases where the abstract of title on first registration or on registration as qualified or absolute discloses the existence of any such liabilities as are mentioned in sub-ss. (4) and (5). Where an easement is registered as an incumbrance, the dominant and servient tenements shall be defined, if practicable and required by the parties. Notice of a power of re-entry and of a right of reverter may be entered on the register under this paragraph.

LAND TRANSFER ACT, 1897.

1. Section in Principal Act.	2. Subject Matter.	3. Extent of Repeal or Nature of Amendment.
19 and 28, second paragraph.	Discharge of incumbrances created prior to the registration of the land, and of registered charges.	These sections shall apply to part discharges.
21	No acquisition of title by adverse possession.	Repealed.
22	Creation of charges....	Charges created under this section are subject to the provisions of the principal Act in respect of qualified or possessory titles.
30—33 and 35—38.	Effect of transfers of freehold and leasehold land.	In the absence of anything to the contrary in the register, or in the transfer, or (in the case of leasehold land) in the lease, the word "land" in these sections includes the mines and minerals if parcel thereof.
40	Transfer of charges....	A registered transferee for value of a charge, and his successors in title, shall not be affected by any irregularity or invalidity in the original charge itself, of which the transferee was not aware when it was transferred to him.
43	Transmission on bankruptcy.	This section shall not apply until it is certified in the prescribed manner by the court having jurisdiction in bankruptcy that the land or charge is part of the property of the bankrupt divisible amongst his creditors. The official receiver shall be entitled to be registered pending the appointment of a trustee.
44, 45, 83 (4)	As to married women..	These sections shall not apply to the case of any woman married on or after 1st January, 1883, or to any property to which a married woman is entitled for her separate use.
49	General powers of disposition over land.	This section includes power to sever the mines and minerals from the surface.
50	Notice of leases	The words "made subsequently to the last transfer of the land on the register" are repealed.
58	Registration of restrictions.	The words "for his own sake, or at the request of some person beneficially interested in such land" are repealed, and the section shall apply to charges as well as to land.

1. Section in Principal Act.	2. Subject Matter.	3. Extent of Repeal or Nature of Amendment.
66	Notices to the Board of Trade and others on registration of fore-shore.	This section shall not apply to registration with a possessory title.
72	Title deeds to be marked with notice of registration.	In the case of registration with a possessory title, the registrar may act on such reasonable evidence as may be prescribed as to the sufficiency of the documents produced, and as to dispensing with their production in special circumstances.
78	Loss or destruction of land certificate.	Repealed.
81	Effect of deposit of land certificate.	Repealed.
82, first paragraph.	Registration of advowsons and other incorporeal hereditaments.	The words "enjoyed in gross" are repealed.
83 (1)	Notices of trusts	Repealed, and the following sub-section substituted:—Neither the registrar nor any person dealing with registered land or a charge shall be affected with notice of a trust, express, implied, or constructive; and references to trusts shall, as far as possible, be excluded from the register.
83 (2)	Undivided shares and joint proprietors.	Repealed.
83 (3)	Entry of no survivorship of joint proprietors.	The words "with their consent" are repealed, and the following words and further provision are added to this sub-section:—"or "of the registrar, after inquiry into title, "subject to an appeal to the court. "Subject to general rules, wherever registered land or a charge is to be entered in the names of two or more joint proprietors, the registrar shall make such entry under this sub-section as may be prescribed, unless it is shown to his satisfaction that the joint proprietors are entitled for their own benefit."
83 (5 and 6)	Description boundaries and extent of registered land.	Repealed.
84	Annexation of conditions to land.	Conditions may be annexed to land at any time, and the section shall apply to any restrictive condition capable of affecting assigns by way of notice.

LAND TRANSFER ACT, 1897.

1. Section in Principal Act.	2. Subject Matter.	3. Extent of Repeal or Nature of Amendment.
126	Transfer of titles from the 1862 register.	The words "nevertheless it shall not be obligatory on any person interested in an estate registered under the said Land Registry Act, 1862, to cause such estate to be registered under this Act" are repealed.
127	Registered land to be exempt from Middlesex and Yorkshire registries.	The section shall not apply to estates and interests excepted from the effect of registration under a possessory or qualified title, or to an unregistered reversion on a registered leasehold title, or to dealings with incumbrances created prior to the registration of the land.

THE SECOND SCHEDULE.

The following fees shall be paid in districts where registration of title is compulsory, and shall include all necessary surveying, mapping, and scrivenery, and the preparation, issue, endorsement, or deposit, as the case may be, of a land certificate, office copy, registered lease, or certificate of charge; discharges of incumbrances, the registration of any necessary cautions, inhibitions or restrictions, the filing of auxiliary documents (if any), and all other necessary costs of and incidental to the completion of each registration or transaction, whether under one or under several titles.

For possessory registration, and for transfers, charges, and transfers of charges for valuable consideration:—

Value.	Fees.
Not exceeding 1,000 <i>l.</i>	1 <i>s.</i> 6 <i>d.</i> for every 25 <i>l.</i> or part of 25 <i>l.</i>
Exceeding 1,000 <i>l.</i> and not exceeding 3,000 <i>l.</i>	3 <i>l.</i> for the first 1,000 <i>l.</i> , and 1 <i>s.</i> for every 25 <i>l.</i> or part of 25 <i>l.</i> over 1,000 <i>l.</i>
Exceeding 3,000 <i>l.</i> and not exceeding 10,000 <i>l.</i>	7 <i>l.</i> for the first 3,000 <i>l.</i> , and 1 <i>s.</i> for every 50 <i>l.</i> or part of 50 <i>l.</i> over 3,000 <i>l.</i>
Exceeding 10,000 <i>l.</i>	14 <i>l.</i> for the first 10,000 <i>l.</i> , and 1 <i>s.</i> for every 100 <i>l.</i> or part of 100 <i>l.</i> , up to a maximum of 25 <i>l.</i> for 32,000 <i>l.</i>

For transmissions and transfers not for value, notices of leases, and rectification of the register, and land:—

One quarter of the above fees, according to the capital value of the interest dealt with, with a minimum of 1*s.* and a maximum of 6*l.*

No fees to be charged for inspection of the register.

CHAPTER IV.

LAND TRANSFER RULES, 1898.

Official Memorandum.

THE Rules (after a preliminary interpretation rule) are divided into five parts.

Part I. prescribes that the register is to be kept in three divisions, one describing the property registered, the next naming the proprietor, and the third containing charges and incumbrances. This arrangement is not new, and in fact follows a mode of division almost universal in registers of this kind. There are also to be a map index showing all registered land, and an index of proprietors' names. The former, but not the latter, is to be open to general public inspection.

Part II. corresponds generally to Part I. of the Act of 1875, and ancillary sections in the later portions of that Act. It deals with the first entry of land on the register, taking possessory title first (Rules 17 to 24), then absolute title (Rules 25 to 41), and then qualified title (Rule 42). A possessory title—to which the compulsory provisions refer—may be registered on production of a conveyance on sale to the applicant, or a statutory declaration by the applicant or his solicitor, stating that he is entitled to the land. In either case sufficient particulars must be furnished to enable the land to be identified on the ordnance map. Any necessary surveying for this purpose is to be done by the Land Registry surveyors free of charge (Rule 216). Variations follow (Rules 43 to 57) for the case of leasehold land, the principal of which is Rule 44 requiring the lease to be produced as well as the other usual evidence. This heading also includes (Rules 45 to

50 and 55 to 57) important modifications of sections 11 to 16, 34, 36, and 37 of the Act of 1875 (Rules 45 to 50 and 55 to 57) made under a special power contained in section 22 (6) (b) of the Act of 1897, for assimilating the mode of registering leasehold and freehold titles. In Rules 58 to 60 compulsory registration is applied to the grant of leases and dealings with leasehold land held under leases having not less than two lives to fall in or 40 years still to run. These Rules are also made under a special power in section 22 (6) (g) of the Act of 1897, as limited by section 24 of the same Act. Then follow (Rules 61 to 67) variations for the registration of special classes of hereditaments, such as manors, advowsons, rents, mines, &c., under section 82 of the Act of 1875, and partial interests such as cellars, flats, and undivided shares; also (Rules 68 to 72) variations for the case of settled land under sections 68 and 69 of the Act of 1875, and section 6 of the Act of 1897; and (Rule 73) a provision as to intermixed freeholds and copyholds under section 67 of the Act of 1875. Cautions against the entry of land on the register (Rules 72 to 77) are also included in this part, and a provision (Rule 78) intended to remove a difficulty arising in districts where registration of title is compulsory, on the wording of section 20 (1) of the Act of 1897, in respect to the vesting of the legal estate where a mortgage or subsale takes place immediately after a conveyance on sale.

Part III. of the Rules corresponds more or less with Part II. of the Act of 1875: dealing with registered transfers of land, charges, transfers of charges, and transmissions on death and bankruptcy. This part includes (Rules 92 to 94) further adaptations of the Act of 1875 assimilating registered dealings with leaseholds to the like dealings with freeholds, under the special power in section 22 (6) (b) of the Act of 1897. This part of the Rules also contains detailed provision for various classes of transfers of comparatively rare occurrence. The Rules applicable to ordinary cases will be found at the beginning of each heading. Some general provisions (Rules 146 to 165) applicable to all classes of transactions in the registry

are placed at the end of the part, and should be studied, especially Rules 156 to 158 as to execution and attestation, and Rule 160 as to delivery at the registry for registration, and as to priority. Rules 121 to 126 are made under a special power contained in section 22 (6) (e) for adapting to sub-mortgages and to incumbrances prior to registration the provisions of the Act of 1875 with regard to charges. Hitherto the first of these kinds of incumbrances could only be protected indirectly on the register by cautions, &c., while though the second were capable of registration by way of notice, subsequent dealings with them (except discharges) could not be registered. The Rules as to transmissions on death include provisions as to settlements and settled land. They are also supplemented by Rules 171 to 174 (in the next part) as to notices of liability to death duties.

Part IV. corresponds with portions of Part III. of the Act of 1875, and carries out certain provisions of sections 18, 19, 20, 83 and 84 of the same Act, and of sections 13, 15, 22 (6) (f) and (h) of the Act of 1897. It comprises, in short, every authorised entry in the register which does amount to a transfer, charge, transfer of charge, or transmission of proprietorship, *e.g.*, notices of leases, death duties, restrictive conditions as to user, cautions, inhibitions and restrictions, and the creation of liens by deposit of certificates.

In Part V. matters incidental to the system, but not usually involving entries on the register, are dealt with. The most important of these are Rules 204 to 208 as to land certificates and certificates of charge; Rules 209 to 221 as to maps, and the mode of describing land and boundaries on the register, including the exact ascertainment of property boundaries; Rules 222 to 230 as to searches, including official searches, and searches by telegraph; Rules 231 to 247 as to appeals from the Registrar and applications to the Court—which are all to be referred to the Senior Judge of the Chancery Division in person; and Rule 271 regulating solicitors' costs for applications and transactions relating to registered land according to an *ad valorem* scale, and Rule 280 fixing the commencement

of the Rules for 1st November, 1898 (*a*), the date already fixed by Order in Council (of 18th July) for the commencement of compulsory registration in the County of London, beginning with the parishes of Hampstead, Marylebone, St. Pancras, and St. George's, Hanover Square.

The Rules are made under the power contained in s. 111 of the Land Transfer Act, 1875, as modified by s. 22 (2), (6), and (7) of the Land Transfer Act, 1897.

Any Rules so made are to be deemed to be within the powers conferred by the Acts, and are to be of the same force as if enacted in the Acts. (Act of 1875, s. 111 (7).)

Rules are to be laid before Parliament (if sitting) within three weeks after they are made, or (if not) within three weeks of the beginning of the next session (s. 111). Being made by the Lord Chancellor they also come within the operation of the Rules Publication Act, 1893 (56 & 57 Vict. c. 66), under s. 1 of which Act notice of the proposal to make them, and of the place where copies of the draft are to be obtained, must be published in the Gazette forty days before they are made. The required notice in the case of these Rules was published on the 5th of April. The Rules were made on the 2nd of August, and laid on the table of both Houses of Parliament the next day.

All existing Rules made under the same power (except a special set of Rules made in 1892 applicable to Small Holdings created under the Small Holdings Act of that year) are rescinded (Rule 279)—the present Rules incorporating the rescinded Rules, with alterations. There will also remain two Rules (made on the 1st of January, 1876, and the 29th of December, 1897) under section 126 of the Act of 1875 as to the transfer of titles from the register kept under the Land Registry Act, 1862 (Lord Westbury's Act), to the register kept under the Land Transfer Acts. The fees are provided for in a separate order to be made under section 112 of the Act of 1875, gazetted on the 26th of July.

(*a*) The date is now 1st January, 1899, for the commencement of the compulsory order: Chap. V., *infra*.

LAND TRANSFER RULES.

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LAND REGISTRY.

LAND TRANSFER ACTS, 1875 AND 1897.

General Rules.

I, the Right Honourable Hardinge Stanley, Earl of Halsbury, Lord High Chancellor of Great Britain, with the advice and assistance of the Honourable Sir Ford North, a Judge of the Chancery Division of the High Court of Justice, Robert Hallett Holt, Esq., Registrar of the Land Registry, Sir Howard Warburton Elphinstone, Bart., Barrister-at-Law, chosen by the General Council of the Bar, James William Clark, Esq., Barrister-at-Law, chosen by the Board of Agriculture, and Benjamin Greene Lake, Esq., Solicitor, chosen by the Council of the Incorporated Law Society, by virtue and in pursuance of the Land Transfer Acts, 1875 and 1897, and of all other powers and authorities enabling in that behalf, do make the following General Rules for the purpose of carrying the said Acts into execution.

Dated this 2nd day of August, 1898.

HALSBURY, C.

LAND TRANSFER RULES, 1898.

NOTE.—The authors have added marginal notes for convenience in reference.

Interpretation.

"The Act of 1875" and "the Act of 1897," and "the Acts."

1.—(1.) In these Rules "the Act of 1875" and "the Act of 1897" mean the Land Transfer Acts of those years respectively, and "the Acts" has a corresponding meaning.

Interpretation Act applicable.

(2.) The Interpretation Act, 1889, is to apply for the purpose of the interpretation of these Rules, as it applies for the purpose of the interpretation of an Act of Parliament, except so far as it may be inconsistent with the Acts or these Rules.

Unless there is something inconsistent in the context or in the Acts :—

(3.) "Land Charge" means a rent or annuity or principal moneys payable by instalments, or otherwise, with or without interest, charged (whether upon the application of any person or not) otherwise than by deed, upon land, under the provisions of any Act of Parliament for securing to any person either the moneys spent by him or the costs, charges, and expenses incurred by him under such Act, or the moneys advanced by him for repaying the moneys spent, or the costs, charges, and expenses incurred by another person under the authority of an Act of Parliament; and a charge under the thirty-fifth section of the Land Drainage Act, 1861; or under the twenty-ninth section of the Agricultural Holdings (England) Act, 1883; but does not include a rate or scot.

See note to r. 116, *infra*.

(4.) "Mines and Minerals" include rights of entry, search, and user, and other rights and reservations incidental to, or required for the purpose of giving full effect to, the enjoyment of rights to mines and minerals, or of property in mines and minerals.

See rr. 87—89, *infra*. This definition includes easements for mining purposes, hence, taken with r. 88 (which enables "mines and minerals" to be transferred without the land), seems to authorise the transfer and creation of mining easements by registered disposition, thus constituting an exception to the general rule, that the proprietor, as such, has no power to grant easements. The correctness of this view, however, has been doubted.

(5.) "Statutory declaration" includes affidavit.

(6.) "The Remuneration Order, 1882," means the general order made in pursuance of the Solicitors' Remuneration Act, 1881.

RR. 1, 2.
DEFINITIONS.
"Land Charge."

Creation of mining easements.

"Statutory Declaration."
"The Remuneration Order, 1882."

PART I.

THE REGISTER.

2. The Register shall consist of three portions, called the Property Register, the Proprietorship Register, and

Divisions of Register.

RR. 2—5.	the Charges Register. In the case of corporeal hereditaments, a plan of the land shall be filed in the registry. The title to each registered property shall bear a distinguishing number.
THE REGISTER.	
Plan. Number of Title. Contents of Property Register.	3. The Property Register shall contain the description of the land comprised in the title, with a reference to the filed plan thereof, and such notes as have to be entered relating to the ownership of the mines and minerals; to exemption from any of the liabilities, rights, and interests mentioned in section 18 of the Act of 1875, as amended by the Act of 1897; to easements, rights to profits à prendre, conditions and covenants for the benefit of the land, and other like matters; and as to the value of the land.
Description.	As to the description of registered land: L. T. A., 1897, s. 14 (2), and rr. 209—221, <i>infra</i> .
Mines and minerals.	As to the notes which have to be entered relating to mines and minerals: L. T. A., 1875, s. 18 (4), (5), and note thereto.
Easements.	As to easements: L. T. A., 1875, s. 18, and note thereto.
Benefit of covenants.	As to covenants for the benefit of the land: L. T. A., 1875, s. 84, and note thereto.
Entry of value.	As to the value of the land, <i>see</i> r. 203, <i>infra</i> .
Additions to or removals of property.	4. When pieces of land are added to or are removed from the property, the addition or removal shall, where it is practicable, be noted in the Property Register, and marked upon the filed plan. “From the property.” This seems to be equivalent to “from the title,” or “from the property register.” As to removal from register: L. T. A., 1897, s. 17.
Particulars of registered lease and reference to lessor's title.	5. In the case of leasehold land, a reference to the registered lease, and such particulars of the lease, and of the exceptions or reservations therefrom (if any) as the applicant may desire, and the Registrar approve; and a reference to the lessor's title, if registered; shall be entered in the Property Register. The register of leasehold land is to be a separate register: L. T. A., 1875, s. 11.

6. The Proprietorship Register shall state whether the title is absolute, qualified, or possessory, and shall contain the name, address, and description of the proprietor of the land, and cautions, inhibitions, and restrictions affecting his right of disposing thereof.

RR. 6—9.

THE
REGISTER.Contents of
Proprietor-
ship Register.

A note of the deposit in, or delivery out from the registry of the certificate will be entered in the Proprietorship Register: r. 206, *infra*.

Quality of
title.Description of
proprietor.References to
cautions, &c.

Two addresses should be given: r. 260.

As to cautions, inhibitions, and restrictions, see rr. 188—196.

7. The Charges Register shall contain incumbrances prior to registration, charges, and other incumbrances (including notices of leases and of estates in dower or by the curtesy), and such notes as have to be entered relating to covenants, conditions, and other rights adversely affecting the land: and shall also contain all such dealings with registered charges and incumbrances as are capable of registration.

Contents of
the Charges
Register.

As to incumbrances prior to registration, see rr. 121, 122, *infra*.

Incum-
brances.

As to notices of leases, see L. T. A., 1875, ss. 50, 51; rr. 166—169.

As to estates in dower or by the curtesy, see L. T. A., 1875, s. 52; r. 170, *infra*.

Notices of
leases.

As to restrictive covenants, see L. T. A., 1875, s. 84, as amended;

Rights to
dower.

rr. 18, 23, 26, 102, 149, 184, *infra*.

Restrictive
covenants.

8. Charges and other incumbrances may, if the registrar thinks fit, be entered in a separate book, and if so entered shall be referred to in the Charges Register. Subsequent dealings therewith shall be registered by being entered in the book wherein the charge or incumbrance is registered.

Separate book
for charges
and incum-
brances.

9. In districts where registration of title is compulsory the register shall be bound in volumes, according to parishes: and where land comprised in one title lies in more than one parish, the proprietor may determine under which parish the title shall be registered. An extra parochial place may be treated as a separate parish having its own volume of the register, or may be treated as part

Register re-
lating to
compulsory
districts to be
bound in
volumes
according to
parishes.

RR. 10—13. of any of the adjoining parishes, as the registrar may in each case deem most convenient.

THE
REGISTER.

For compulsory orders, *see* Chap. V., *infra*.

Plan to show
portions
affected by
entries.

10. When there are several entries in the register affecting portions of a title or charge, a plan may be made, showing the portions affected by each entry, and such plan shall be referred to in the register.

Power for
landowner to
have separate
volume for
his title.

11. Any landowner who desires it may have the register of his title bound in a separate volume, on such terms (if any) as the registrar may think fit.

Index Maps
of freeholds,
leaseholds,
and incor-
poreal here-
ditaments.

12. There shall be kept in the registry an index map which shall show the position and extent of every registered property by means of a tint of colour, together with the number of the title under which it was first registered. A separate index map shall be made of leasehold titles, and of lands affected by the registration of incorporeal hereditaments.

Index of
registered
proprietors of
land or
charges.

There shall also be kept an index of proprietors' names in alphabetical order, showing the numbers of the titles, charges, or incumbrances of which the several persons appearing in it are proprietors. It shall be kept up to date by cancelling the obsolete names and numbers, as well as by making all necessary additions from day to day.

Searches on
purchase of
unregistered
land.

Where land, apparently unregistered, is situated in a compulsory district, a purchaser should search the index maps, and also where no deeds are produced; in other cases a purchaser may rely on notice of registration being entered on the deeds: rr. 20, 21, *infra*; L. T. A., 1875, s. 72; *see*, however, r. 22, *infra*.

Index of pro-
prietors not
open to
public.

The index of proprietors' names may only be inspected by registered proprietors, or persons having a sufficient interest in their property: r. 14, *infra*.

List of pend-
ing applica-
tions to
register.

13. A list shall also be kept of pending applications to enter land in the register, showing the parish or place, the name and address of the applicant, and the number of the application in each case.

Searches on
purchase of
unregistered
land.

This list, as well as the index maps, is open to the public

(r. 14, *infra*), and should be searched in the same cases (*see* note to last Rule), for the registration relates back to the date of application: r. 19 *infra*.

RR. 14—16.

THE
REGISTER.

14. The index maps, and the list of pending applications (but no other book, map, plan, or document), shall be open to general public inspection, at any time during office hours. The index of proprietors' names shall be open to the inspection of the registered proprietors only. Provided that if any person shall satisfy the registrar that he is interested generally in the property of any proprietor—for instance, as his trustee in bankruptcy, or his executor or administrator—he may inspect that index also.

Index maps
and list of
pending
applications
to be open to
public
inspection.

This Rule with L. T. A., 1875, s. 104, secures the secrecy of the register.

Secrecy of the
register.

15. Where any clerical error or error of a like nature is discovered in the register, or in any plan or document referred to therein, which can be corrected without detriment to any registered interest, the registrar may (if he thinks fit, and after giving any notices, and calling for any evidence or obtaining any assent he may deem proper) cause the necessary correction to be made.

Power for
registrar to
correct
clerical errors.

As to rectification, *see* L. T. A., 1897, s. 7, and note.

Rectification.

As to correction where the registered proprietor refuses to transfer to a person with a paramount title, *see* r. 101, *infra*.

Correction on
refusal to
transfer.

As to altering description of registered proprietor, *see* r. 16, *infra*.

As to alteration in names and numbers of streets, and revision of plans and verbal descriptions, *see* rr. 219, 220, *infra*.

Description
of registered
proprietor.

16. The registrar may, at any time, after such inquiry, and the giving of such notices, if any, as he may consider proper, and, upon the production of such evidence as is required by these Rules, or he may deem necessary, withdraw from the register by cancellation or otherwise, any lease, incumbrance, charge, note, notice, or other entry, which he is satisfied has determined or ceased, or been discharged, or for any other reason no longer affects or relates to registered land: and may also from time to time make any formal alterations in the register as to any

Power for
registrar to
cancel expired
entries, and
to make
formal
alterations.

RR. 16—18. change in the name or address of any registered proprietor or other person, or otherwise, as he may deem proper.

THE
REGISTER.

As to cancelling notice of leases, *see* rr. 181—183, *infra*.

As to foreclosure, alteration, or discharge of incumbrances, *see* rr. 110—112, 127, 179, 180, *infra*.

As to cancelling notice of liability to death duties, *see* r. 174, *infra*.

As to correcting clerical errors, *see* r. 15, *supra*, and note.

PART II.

FIRST REGISTRATION.

Possessory Title.

Mode of
application
for registra-
tion with pos-
sessory title.

17. Application for registration with a possessory title shall be made by delivering at the Registry a written application to the effect of Form 1 in the First Schedule hereto, accompanied by either

- (a.) A conveyance on sale to the applicant, or
- (b.) A statutory declaration by the applicant or his solicitor in Form 2 in the First Schedule hereto, or to that effect, accompanied by the latest document of title (if any) in the possession or under the control of the applicant.

The application shall in either case contain or be accompanied by sufficient particulars, by plan or otherwise, to enable the land to be fully identified on the Ordnance map. If the application is for registration in the name of a nominee, or is made by a purchaser, the consent in writing of the nominee, or of the vendor, or his solicitor, shall also be left with the application.

As to possessory titles, *see* L. T. A., 1875, ss. 5, 8, 32.

As to persons who may apply for registration, *see* L. T. A., 1875, ss. 5, 68, and L. T. A., 1897, s. 6.

In the case of leaseholds, “conveyance on sale” includes “a grant or assignment of a lease or sub-lease”: r. 43, *infra*.

Statement of
incumbrances
not necessary,
but incum-
brances, if
mentioned, to
be referred to
in Charges
Register.

18. It shall not be necessary to state in the application whether the property is subject to any, or, if any, what incumbrances, conditions, or other burdens. If, however, any statement as to such matters is made therein, they

shall be referred to in the Charges Register. But the title will not be investigated by the registrar, and registration with a possessory title only will not affect or prejudice the enforcement of any estate, right, or interest adverse to or in derogation of the title of the first registered proprietor and subsisting or capable of arising at the time of registration of such proprietor, whether such estate, right, or interest appears in the register or not.

RR. 18—20.
—
POSSESSORY
TITLE.
—

The latter part of this Rule repeats L. T. A., 1875, s. 8, with the addition of the words “whether . . . or not.”

See also r. 40, *infra*, for other cases where incumbrances may be entered by reference to the instrument creating them.

Incumbrances
entered by
reference.

As to entries in the Charges Register, *see* r. 23, *infra*.

19. When an application complying with Rule 17 has been delivered, and the entries and plan have been duly settled, the registration shall be effected as of the day on which and in the priority in which the application was delivered at the registry; and the land certificate shall be prepared and shall either be handed to the applicant, or (if he prefers it) be deposited in the registry.

Registration
of possessory
title to take
effect from
date of appli-
cation.

As to certificates, *see* L. T. A., 1875, s. 10; L. T. A., 1897, s. 8; Certificates. and rr. 204—208, *infra*.

For another case where registration relates back, *see* r. 165, *infra*.

20. If a deed or other document of title is delivered with the application, it shall be marked with notice of the registration and with the number of the title, and shall at the applicant's option either be retained in the registry, or be delivered to him, a copy or insufficient abstract thereof for filing being furnished by him, if required.

Marking of
notice of
registration
on documents.
Filing of
copies.

See, also, as to marking deeds with notice of registration, L. T. A., 1875, s. 72, and next Rule.

As the proprietor on a future disposition will probably have to prove his title arising prior to registration, he should take away the deeds. Moreover, they would be required on a mortgage by deposit: L. T. A., 1897, s. 8, last paragraph, note; and as to re-delivery of deeds in case of absolute title, *see* r. 38, *infra*.

Deeds to be
taken away
by proprietor.

RR. 21—24.

POSSESSORY
TITLE.Statutory
declaration
that the pro-
duced deeds
alone require
to be marked.

21. Where the deeds produced to be marked under section 72 of the Act of 1875 are numerous, the registrar may act upon a statutory declaration by the solicitor of the applicant to the effect that all the lands included in the application are dealt with by the deeds produced, and that the deeds produced are all the deeds necessary to be marked, for the purposes of that section, in order to give notice to any person dealing with the land of the fact of registration.

The L. T. A., 1875, s. 72, which is not confined to the case of possessory titles, provides for indorsing notice of the registration on the title deeds.

As to statutory declarations, *see* r. 261, *infra*.

Power to
complete
registration
without
marking
documents of
title.

22. If in any case it is proved to the satisfaction of the registrar by the statutory declaration of the applicant's solicitor, or otherwise, that any document of title requiring to be marked under that section cannot be produced, the registrar may complete the registration without such production.

As to the registrar's power to compel production of deeds, &c., *see* L. T. A., 1875, ss. 71, 109, 110; L. T. A., 1897, s. 8 (1); rr. 267, 268, *infra*.

This Rule only enables the registrar to complete without production in the case of a possessory title: *see* amendment to L. T. A., 1875, s. 72.

Entries in
Charges
Register.

23. No entry in the Charges Register shall be made on a registration with a possessory title, except as provided by Rules 18 and 54.

Rule 18 relates to any statement as to incumbrances which may be made on the application for registration with a possessory title.

Rule 54 relates to a leasehold interest which has been already registered.

Time when
registered
land to be
deemed re-
moved from
jurisdiction of

24. Where the land included in any application for registration is subject to the jurisdiction of the Middlesex or Yorkshire Registries of Deeds, the registration shall be deemed, for the purpose of removing the land from that

jurisdiction, to have taken place at the beginning of the day on which the application is delivered at the Land Registry, and prior to any registration on that day of a memorial in the local Deed Registry.

RR. 24—27.

POSSESSORY
TITLE.

Middlesex
and Yorkshire
Deeds
Registries.

See, also, as to registered incumbrances, r. 122, *infra*.

As to the exemption of registered land from the jurisdiction of local registries, *see* L. T. A., 1875, s. 127, as amended.

As to land removed from the register, *see* L. T. A., 1897, s. 17 (3).

This Rule is confined to registration with a possessory title, for there is no rule relating to absolute titles which corresponds to r. 19, *supra*.

Absolute Title.

25. Application for registration with an absolute title shall be made by delivering at the registry a written application to the effect of Form 3 in the First Schedule hereto. Such application shall state the county and parish or place in which the land is situate, and the name of the estate, or other short particulars sufficient to identify it.

Mode of
application
for registra-
tion with
absolute title.

As to absolute titles, *see* L. T. A., 1875, ss. 5, 7, 30.

26. If the applicant for registration desires to annex conditions to the land under the provisions of s. 84 of the Act of 1875, as amended by the Act of 1897, such conditions shall be stated in or delivered with the application.

Restrictive
covenants.

The burden of restrictive covenants will be entered in the Charges Register: r. 7, *supra*. As to the registration of the burden in the case of possessory titles, *see* rr. 18, 23, *supra*. L. T. A., 1875, s. 84, relates only to the burden of the covenant; it may be entered up at any time: *see* amendment to that section.

Burden and
benefit of
restrictive
covenants.

The benefit of a covenant will be entered in the Property Register: r. 3, *supra*.

As to transfers subject to restrictive covenants: r. 102; *see*, also, rr. 149, 184.

27. When the application is for registration in the name of a nominee, or is made by a purchaser, the consent in writing of the nominee, or of the vendor or his solicitor, shall be delivered with the application.

Consent of
nominee or
vendor to
application.

As to the inadvisability of a purchaser registering without a conveyance, *see* note to L. T. A., 1875, s. 5.

RR. 28—31.

ABSOLUTE
TITLE.

Land below
high-water
mark.

28. Where any land comprised in an application for registration is below high-water mark at ordinary spring tides, the fact shall be stated in the application, and the notices required by s. 66 of the Act of 1875 shall be prepared by the applicant and served through the registry within seven days after the delivery of the application.

L. T. A., 1875, s. 66, does not apply to registration with a possessory title: *see* amendment.

As to notices, *see* L. T. A., 1875, ss. 90—92; and rr. 256—259.

Abstracts of
title, opinions
of counsel, &c.
to be delivered
with appli-
cation.

29. There shall also be delivered with the application an abstract of title in the usual form, together with all such deeds and documents relating to the title as the applicant has in his possession or under his control, including opinions of counsel, abstracts, contracts for or conditions of sale, requisitions, replies, and other like documents, in regard to the title; and also a list of the tenants and occupiers of the land. Any other documents required to be produced in support of the abstract shall also be delivered with the application, or upon its delivery a time and place shall be appointed for their production. A schedule of all documents delivered at the registry in support of the abstract shall be left with the documents.

As to occupation leases: L. T. A., 1875, s. 18 (7); and as to evidence of title: *ib.*, s. 6.

Power for
registrar to
appoint per-
son to make
searches and
inquiries.

30. All searches and inquiries which the registrar shall consider necessary in the examination of, or in relation to, the title shall be made by such person and in such manner as the registrar shall direct.

The examiner of title will advise these searches in the ordinary course: *see* next Rule.

Title to be
examined by
registrar in
accordance
with usual
conveyancing
practice with
power to refer

31. The title shall be examined by or under the superintendence of the registrar in accordance with the usual conveyancing practice, subject as follows:—

(a) The whole or any portion of the examination of the title may be referred by the registrar, if he thinks

fit, for the opinion of one of the examiners of title appointed under Rule 248, and the registrar may act on such opinion. RR. 31—34.
ABSOLUTE
TITLE.

- (b) Where the land has been sold under order of Court, or where the title has been fully investigated on a recent purchase, the examination may be modified in such manner as the registrar may think fit. to examiner of title, and to modify examination if title has been recently investigated.

The registrar has power to accept a holding title: L. T. A., 1875, s. 17 (3); and *see* note to s. 6, *ib.*

Under r. 248, the conveyancing counsel of the Court, and such other barristers experienced in conveyancing as the L. C. may appoint, will be the examiners: *see*, also, rr. 249, 250, *infra*. Conveyancing counsel.

32. An advertisement of the application shall be inserted at least once in the London Gazette, and shall also be inserted in such local and other newspaper or newspapers, for such number of times and at such intervals of time, as shall be fixed by the registrar in each case, giving the name and address of the applicant, the name and short description of the land, and the county and parish or place in which it is situate; and requiring objections (if any) to be made before the expiration of a stated period not less than two months from the appearance of the latest advertisement. Advertisements in Gazette and newspapers.

Month means calendar month: Interpretation Act, 1889, s. 3; "Month." also, r. 1 (2), *supra*.

This Rule and r. 34, *infra*, prescribe the notices required by L. T. A., 1875, s. 17 (1). Notices.

33. With a view to the saving of expense, the advertisements of two or more applications may be grouped, if the registrar approves: and the advertisement in the London Gazette shall be in the tabular form given in Form 4 in the first schedule hereto. Advertisements may be grouped to save expense.

34. The applicant shall furnish all information that the registrar may require, and notices shall be served on the Applicant to give every information to registrar.
C.

RR. 34—37. tenants and occupiers and such other persons (if any) as the registrar shall deem necessary.

ABSOLUTE
TITLE.

Notice to
tenants.

As to service of notices: L. T. A., 1875, ss. 90—92; and rr. 256—259, *infra*.

As to notices in case of cellars, flats, and tunnels: r. 66.

Objections to
registration.

35. Any person may, by notice in writing, signed by himself or his solicitor, and delivered at the registry, object to the registration. Such notice shall state concisely the grounds of the objection, and give the address in the United Kingdom of the person delivering the notice, and, if it is delivered by a solicitor, shall give the name and address of the person on whose behalf it is given.

See L. T. A., 1875, s. 17 (1), (2).

Notice of
objection.
Hearing of
objection.

36. The registrar shall thereupon give notice to the applicant of the objection, and the title shall not be registered as absolute until the objection has either been withdrawn or otherwise disposed of. The applicant may obtain an appointment before the registrar for the hearing of any objection, and shall give the objector at least seven clear days' notice of such appointment. If the objector does not appear at the time appointed his objection shall be treated as withdrawn unless the registrar allows another appointment to be made. At the hearing of the objection any party may be heard in person or by his counsel or solicitor.

See L. T. A., 1875, s. 17 (1), (2).

Entry in
register for
protection of
person
objecting.

37. Where any person so objecting to registration desires to have any entry for his protection made in the register, he shall proceed in the same manner as is directed with respect to applications made under Rule 178, unless the applicant for registration consents to the entry being made.

Rule 178 provides for entry of notice of rights within L. T. A., 1875, s. 18, in the Charges Register.

38. When all requisitions and objections (if any) have been disposed of, the proper entries for the register shall be drawn by the registrar and approved by the applicant or his solicitor; and at the expiration of the time fixed by the advertisements, and by any notices that may have been directed, and after the requirements of sections 70 and 72 of the Act of 1875 have been complied with, the registration shall be completed: and the documents of title, other than such as have under these Rules to be retained in the registry, shall be delivered to the applicant.

RR. 38—40.
ABSOLUTE
TITLE.
Completion of
registration.

Sections 70 and 72 of the L. T. A., 1875, relate to the statutory declaration, as to the disclosure of all documents and facts material to the title, and the marking of deeds with notice of the registration respectively.

As to retainer of documents at the registry, *see* r. 162, *infra*, which provides that all documents on which an entry in the register is founded, are to be retained at the registry, except where otherwise provided by the Rules. It is not quite clear how far r. 38 is an exception to this Rule; at any rate, documents conferring rights adverse to the estate of the registered proprietor, or conferring rights not capable of registration, should not be retained at the registry: *see* also r. 20.

Retainer of
documents at
the registry.

As to advertisements and notices, *see* rr. 32, 34, *supra*.

39. The land certificate shall thereupon be prepared, and shall either be delivered to the proprietor, or, if he prefers it, be deposited in the registry.

Land certifi-
cate.

See L. T. A., 1897, s. 8 (4) (i)—(iv); also rr. 55, 204—208, *infra*.

40. Incumbrances, conditions, and other burdens (including fee farm grants, or other grants reserving rents or services) to which the fee simple estate in the land may be subject, shall be entered in the register in accordance with the title produced; and may be entered either directly, or by reference to the instruments by which they are created, or by setting out extracts therefrom.

Incumbrances
to be entered
directly or by
reference to
the instru-
ments creat-
ing them.

As to the effect of registration, subject to a legal mortgage, *see* L. T. A., 1875, s. 7, and note thereto.

See further as to fee farm rents: rr. 63, 83—85, *infra*; and L. T. A., 1875, s. 82.

Fee farm
rents.

As to filing order or resolution appointing a liquidator of a company, *see* r. 145.

RR. 41—46.

ABSOLUTE
TITLE.

Statutory
declar- tion to
show that
requirements
of s. 70 of the
L. T. A.,
1875, have
been complied
with.

Qualified title.

41. The evidence to show that the requirements of section 70 of the Act of 1875 have been complied with, shall be a statutory declaration in Form 5 in the First Schedule hereto.

Section 70 of the L. T. A., 1875, requires the disclosure of all documents and matters affecting the title.

Qualified Title.

42. If upon an application for an absolute title it appears to the registrar, upon the examination of the title, that a qualified title only ought to be entered on the register, and the applicant on being informed thereof requests in writing that such qualified title should be entered, the registrar shall frame the proper entries for the register, and shall obtain the applicant's approval of them, and shall register the qualified title accordingly.

As to qualified titles, *see* L. T. A., 1875, s. 9; rr. 49, 52, 66, *infra*.

Leasehold Land.

Foregoing
Rules to apply
to leasehold
land.

43. The provisions of the foregoing Rules with regard to applications for registration of freehold land shall apply generally to applications for registration of leasehold land, and any necessary alteration in the forms shall be made; and the words "conveyance on sale" in Rule 17 (a) shall be read as including a grant or assignment of a lease or sub-lease.

The "foregoing Rules," *i.e.*, rr. 17—42; as to applications for registration of leaseholds, *see* L. T. A., 1875, s. 11.

Lease to be
delivered with
application to
register.

44. The lease, in all cases when it is in the possession or under the control of the applicant, and in other cases a copy thereof, shall be delivered with the application.

Registration
of leasehold
land with
absolute or
possessory
title.

45. Application may be made for the registration of leasehold land with absolute or with possessory title.

Compare L. T. A., 1875, s. 5, and *see* L. T. A., 1897, s. 22 (6) (b).

Absolute title.

46. When an absolute title is required no person shall be registered as proprietor of leasehold land until and unless the title both to the leasehold and the freehold, and

to any intermediate leasehold that may exist, is approved by the registrar. RR. 46—49.

LEASEHOLD
LAND.

Compare L. T. A., 1875, s. 6.

47. The effect of registration of a person as first proprietor of leasehold land with an absolute title shall be that stated in s. 13 of the Act of 1875 as the effect of registration with a declaration that the lessor had an absolute title to grant the lease under which the land is held. Effect of registration of leasehold land with absolute title.

48. The registration of a person as first proprietor of leasehold land with a possessory title shall not affect or prejudice the enforcement of any estate, right, or interest (whether in respect of the lessor's title or otherwise) adverse to or in derogation of the title of such first registered proprietor, and subsisting or capable of arising at the time of the registration of such proprietor; but, save as aforesaid, shall have the same effect as registration with an absolute title. Effect of registration of leasehold land with possessory title.

Compare L. T. A., 1875, s. 8, and *see* last rule.

49. Where an absolute title to leasehold land is required, and on the examination of the title it appears to the registrar that the title, either of the lessor to the reversion, or of the lessee to the lease, can be established only for a limited period, or subject to certain reservations, the registrar may, upon the request in writing of the person applying to be registered, by an entry made in the register, except from the effect of registration the title of the lessor to grant the lease, or any estate, right, or interest arising before a specified date, or arising under a specified instrument, or otherwise particularly described in the register: and a title registered subject to any such exception shall be called a qualified title, and the registration of a person as proprietor subject to such exception, shall not affect or prejudice the enforcement of any estate, right, or interest so appearing by the register to be excepted; but save as Registration of leasehold land with qualified title.

RR. 49—53. aforesaid shall have the same effect as registration with an absolute title.

LEASEHOLD
LAND.

Compare L. T. A., 1875, s. 9.

“Lessor”
and “lease”
to include
“sub-lessor”
and “sub-
lease.”

50. In cases where any intermediate leasehold estate exists between the freehold reversion and the leasehold estate which is the subject of registration, the words “lessor” and “lease” in these Rules and in ss. 13 and 35 of the Act of 1875, shall be read as including, and also applying to, a sub-lessor and a sub-lease.

It is conceived that “sub-lease” would include a sub-sub-lease, and so on, where necessary.

Power to
register
several leases
under one
number.

51. Where several leases are vested in the same proprietor, they may, on his application in writing, and with the approval of the registrar, be registered under one number, or may be grouped under various numbers as may be considered most convenient for the purpose of saving expense and facilitating future transactions.

Lease con-
taining re-
straint on
assignment
without con-
sent to be
registered
with qualified
title.

52. On the registration of any leasehold land held under a lease containing a prohibition against alienation without license, the registration shall be with a qualified title only: and all estates, rights, interests, powers, and remedies under such lease, arising upon, or by reason of, any alienation without license shall be expressly excepted from the effect of registration.

Notice of
registration
of lease of
registered
land to be
given.

53. Where a lease affecting land already registered is registered in pursuance of these Rules, notice of the registration thereof shall be given to the registered proprietor of the land; or of the superior lease out of which the lease is granted, as the case may be; and if no valid objection be made within 28 days after service of the notice, the lease shall be noted against the title to the freehold or to the superior lease in the same manner as notices of leases have to be entered under sections 50 and 51 of the Act of 1875, and these Rules.

Compare ss. 50, 51, and notes thereto; also rr. 166—169, *infra*.

54. Where, on the registration of freehold or leasehold land, it appears that there is a lease or sub-lease, as the case may be, already registered affecting the same land, a reference to such lease or sub-lease shall, if the registrar so direct, be entered in the Charges Register.

RR. 54—57.

LEASEHOLD
TITLE.

Power on
registration
to enter
notice of an
existing lease
or sub-lease
already
registered.
Application
of provisions
as to land
certificates to
leasehold
land.

This notice may be entered, whether the title to the reversion is possessory or absolute: r. 23, *supra*.

55. The provisions as to land certificates of section 10 of the Act of 1875, as amended by section 8 of the Act of 1897, shall apply to leasehold land.

The L. T. A., 1875, s. 10, provided for the issue of a land certificate at the request of the registered proprietor. The L. T. A., 1897, s. 8, provides (amongst other things) that on first registration after 1897 a land certificate is to be prepared, and either delivered to the proprietor or deposited in the registry.

See also as to certificates: rr. 39, 204—208.

56. When a lease and a reversionary lease to take effect in possession upon, or at any time within one month after, the expiration of that lease, are so held that the beneficial interest under both instruments belongs to, or is in the power or under the control of the same person or persons, such leases, so far as they relate to lands comprised in both instruments, shall be deemed for the purposes of section 11 of the Act of 1875 to create one continuous term.

Lease and
reversionary
lease when
taken to
create one
term.

L. T. A., 1875, s. 11 (1), defines the leases which may be registered, and this Rule extends the definition. The rule prevents evasion of the compulsory provisions.

As to the reason for leaving a nominal period between the determination of the first lease and the commencement of the next term, see C. A., 1881, s. 10, which shows that the rent and the lessees' covenants run with the immediate reversion.

57. The following portions of the Act of 1875, dealing with the registration of leasehold land, shall be deemed to have been omitted therefrom:

Repeal of
portions of
Act of 1875.

Section 11. From "with the addition" to the word "held" at the end of the paragraph, and from "every applicant" to "the registered lease."

RR. 57—60.

LEASEHOLD
LAND.

Sections 12, 14, 15, 16. The whole.

Section 34. From "upon completion" to the end.

Sections 36 and 37. The whole.

This Rule in effect repeals the sections to the extent mentioned therein. This is not *ultra vires*: see L. T. A., 1897, s. 22 (6) (b), and note to L. T. A., 1875, s. 111.

Application to the Grant of Leases and Dealings with Leasehold Land of the Provisions of the Act of 1897 with respect to Compulsory Registration.

Order in Council as to compulsory registration to extend to leasehold land.

58. An Order in Council, made under section 20, subsection 1, of the Act of 1897, shall, in the absence of anything to the contrary in the Order, extend to sales of leasehold as well as of freehold land, and to grants of leases and underleases.

See L. T. A., 1897, ss. 20 (1), 22 (6) (a) (g).

Sales and grants of leases and underleases.

"Sales of leasehold." This will include sales of underleases, as well as leases, so long as the term is within r. 59, *infra*, and see r. 50.

Effect of Order in Council as regards leasehold land.

59. The effect of an Order so made shall be that as regards land in the county or part of a county comprised in the Order an assignment on sale of a lease or underlease, having at least forty years to run, or two lives yet to fall in, and a grant of a lease or underlease for a term of forty years or more, or for two or more lives, executed after the day specified in the Order, and capable of registration, shall operate only as an agreement, and shall not pass any legal estate to the assignee or lessee unless or until he is registered as proprietor of the lease or underlease.

Interests excluded from effect of compulsory order. "And capable of registration."

As to the interests in land which are excluded from the effect of the compulsory order, see also L. T. A., 1897, s. 24 (1).

"And capable of registration," see Amendment to L. T. A., 1875, s. 11; a term created for mortgage purposes is not capable of registration, see also r. 56, *supra*.

Definitions, "assignment on sale,"

60. The expressions "assignment on sale" and "grant of a lease or underlease" in the preceding Rule shall have

a meaning corresponding to that given to the expression "conveyance on sale" by section 20, sub-section 2, of the Act of 1897.

RR. 60—62.

COMPULSORY
REGISTRATION.

This Rule seems to prevent the evasion of the compulsory order as regards leaseholds by means of a mortgage, followed by a release of the equity of redemption, when part of the same transaction.

"grant of a
lease or
underlease."

Mortgage and
release of
equity of
redemption
not a means
of evasion.

Manors, Advowsons, Rents, Tithes, and other Incorporeal Hereditaments, Mines and Minerals severed from the Land, Cellars, Flats, and similar Hereditaments, and undivided Shares in Land.

61. Application for registration of manors, advowsons, rents, tithes, or other incorporeal hereditaments, mines and minerals severed from the land, cellars, flats, and other similar hereditaments, and undivided shares in land, shall be made according to the Rules above prescribed in the case of absolute and possessory titles respectively, and shall be proceeded with in the same manner subject only to such modifications as the nature of the case may require and the Registrar may approve.

Registration
of incorporeal
heredita-
ments.

"Rules above prescribed," i.e., rr. 17—41, and in the case of a leasehold interest in a hereditament, rr. 43—57.

As to manors, advowsons, rents, tithes, and other incorporeal hereditaments, see also L. T. A., 1875, s. 82.

As to mines and minerals severed from the land, see also *ib.*, and r. 64, *infra*.

As to undivided shares, see also L. T. A., 1875, s. 83, and L. T. A., 1897, s. 14 (1).

62. On the registration of a manor the applicant shall leave in the registry a plan of the lands (if any) alleged to be the demesne lands of the manor, other than lands held by copy of Court roll.

Registration
of a manor.

Copyholds are not to be registered: L. T. A., 1875, s. 2; see also amendment to that section, and L. T. A., 1897, s. 1 (4); also r. 73, copyholds. *infra*.

The demesne lands must not be registered separately from the manor, for some of the manorial rights might thereby be extinguished: cf. Goodeve R. P. 4th ed. 321.

Other than
demesne
lands.

RR. 63—66.

**SPECIAL
HEREDITA-
MENTS.**

Registration
of a rent-
charge or
tithe rent-
charge.

Mines and
minerals
severed from
the land.

63. On the registration of a rent or tithes, or rentcharge in lieu of tithe, the applicant shall leave in the registry, with the application, a plan of the lands out of which they are issuing, or such other information as may be necessary for identifying such lands on the Ordnance map.

See further as to fee farm rents or rentcharges : rr. 40, 83—86.

64. On the registration of mines and minerals severed from the land, a plan showing as accurately as is practicable the surface under which the mines and minerals lie shall be deposited in the registry, together with such other plans, sections, and further descriptions (if any) as the registrar may deem necessary for the purpose of identifying such mines and minerals, and also together with full particulars of any appurtenant rights of access, or rights incidental to the working of the mines and minerals that may be subsisting and intended to be entered in the register.

For definition of “ mines and minerals,” see r. 1 (4), *supra*.

See also L. T. A., 1875, ss. 18 (4), (5), 49, and note thereto ; and rr. 87—89, *infra*.

Registration
of flats, cellars
and tunnels.

65. On the registration of a proprietor of a flat or floor, or part of a flat or floor, of a house, or of a cellar or tunnel or other underground space apart from the surface, a plan shall be furnished of the surface under or over which the tenement to be registered lies, and such further verbal or other description as the registrar may deem necessary, together with notes of any appurtenant rights of access, in common with others or not, or obligations affecting other tenements for the benefit of the tenement the title to which is being registered.

Notices on
registration
of flats,
cellars or
tunnels.

66. Before completing any such registration with an absolute or qualified title, notices shall be given to the owners and also to the occupiers of the other tenements immediately above and below and (where in the same building) adjoining laterally to the tenement which is the

subject of the application, and to such other persons (if any) as the registrar may direct.

RR. 66—68.

SPECIAL
HEREDITA-
MENTS.

As to other notices, *see* r. 34.

67. On the registration of different persons as proprietors of undivided shares in land, the registration of more shares than one may, if the proprietors thereof so desire, and subject to the approval of the registrar, be made under one title, and in such case the share held by each proprietor shall be specified in the Proprietorship Register. If the shares are registered under separate titles the share to which each title relates shall be stated in the Property Register.

Registration
of undivided
shares.

See L. T. A., 1875, s. 83 (2); L. T. A., 1897, ss. 14 (2), 24 (1).

Settled Land.

68. Application for registration of settled land may be made by any person capable of being registered as proprietor, with the consent of the other persons (if any) whose consent or concurrence is necessary to a sale by that person.

Application
for registra-
tion of settled
land.

As to persons capable of being registered, *see* L. T. A., 1897, s. 6 (1); *see*, also, as to settled land, rr. 81, 82, 131—135, *infra*; and as to the consent to sales, *cf.* L. T. A., 1875, s. 68.

The consent of an assignee of the life interest will be requisite (S. L. A., 1882, s. 50 (3)), unless the assignment is within S. L. A., 1890, s. 4, or unless the tenant for life has in the assignment reserved his statutory powers: Form 7.

Consent of
persons neces-
sary to a sale.

Where an incumbrance has priority to the settlement (S. L. A., 1882, s. 20), the consent of the incumbrancer (not in possession) will not, it is conceived, be required (*cf.* L. T. A., 1875, s. 5, which does not, however, apply to settled land), unless the incumbrance contains a covenant not to register without consent, and a caution is lodged under L. T. A., 1875, s. 60.

Incum-
brancers
having
priority to
settlement.

Neither will the consent of S. L. A. trustees, where the tenant for life applies, be requisite, except on registration of the principal mansion-house (S. L. A., 1890, s. 10), for the tenant for life may sell without their consent (S. L. A., 1882, ss. 3, 42), the mere receipt of the purchase money by the trustees is a waiver of the notice required by S. L. A. 1882, s. 45; moreover, registration

Settled Land
Act trustees.

RR. 68—70. where there are no S. L. A. trustees is contemplated: *see* r. 70, *infra*.

SETTLED
LAND.
—
“Settled
land.”

As to the meaning of “settled land” in these Rules, *see* L. T. A., 1897, s. 6 (1), (10); Interpretation Act, 1889, s. 31; r. 1 (2), *supra*; S. L. A., 1882, s. 2 (3); it includes leaseholds settled upon trusts corresponding to the uses affecting the freeholds.

Proper re-
striction to be
left with
application
for registra-
tion with
possessory
title.

69. In the case of an application for registration with possessory title the proper restriction shall be left with the application, or the registrar shall be furnished with the information necessary to enable him to draw the proper restriction.

As to the proper restrictions, *see* rr. 70, 71, *infra*, and notes thereto.

Principles on
which restric-
tions and
inhibitions
are to be
framed.

70. In framing restrictions and inhibitions for the protection of settled land, it shall not be the duty of the trustees or of the registrar to protect the interests of any person who would not have been a necessary party to a sale or mortgage thereof if the land had been unregistered; but it shall be the duty of the trustees, or, if there are no trustees, of the registrar, to give notice of the restrictions and inhibitions to such of the beneficiaries (if any) as the registrar shall direct, and any such person can, if he desires (but at his own risk), lodge a caution or apply for an inhibition.

See L. T. A., 1897, s. 6 (2); also rr. 82, 131—135, *infra*.

As to mortgages of settled land, *see* S. L. A., 1882, ss. 5, 18; S. L. A., 1890, s. 11.

Necessary
parties to sale
or mortgage.

Where there is an incumbrance having priority to the settlement (S. L. A., 1882, s. 20), and the land is registered with a possessory title, the registration will not affect the incumbrance (L. T. A., 1875, s. 8; r. 48, *supra*), though, if desired, it may be entered in the Charges Register (rr. 18, 23, *supra*); if the land is registered with an absolute title, the incumbrance must be so entered (r. 40, *supra*), in neither case, therefore, will a restriction or inhibition be the proper mode to protect the incumbrance.

The object of the restrictions and inhibitions is to protect the interests of persons beneficially entitled under the settlement, and their assigns: *see* next Rule. Where the interest is capable of being displaced under the S. L. As., then, if the restriction (*e.g.*, Form 6) is sufficient, the beneficiary will not be entitled to lodge a caution: *see* L. T. A., 1875, s. 56.

As to protection being required against a mortgage by deposit by a tenant for life, *see* L. T. A., 1897, s. 6 (8), and notes to s. 8, last paragraph; *see* also r. 146, *infra*, and note to r. 71.

RR. 70, 71.

SETTLED
LAND.

Protection
against
mortgage by
deposit by
tenant for
life.

Forms of
restrictions
and inhibi-
tions.

• Power
to modify.

71. The restrictions and inhibitions given in Forms 6 to 10 in the First Schedule hereto, shall apply respectively to the various cases set forth in those forms, and may be modified according to circumstances as the parties may require and the registrar may deem fit.

See also r. 82.

Form 6 supplies the common form restriction and inhibition where a tenant for life is registered.

Modifications
of, and notes
on, Form 6.

Partition.

Where an undivided share is registered, the words "or partition" ought to be added after the word "exchange:" *see* S. L. A., 1882, s. 3 (iv); r. 105, *infra*. The words "on sale" after "the purchase moneys" might well be omitted in all cases, as the expression should include money paid for equality of exchange or partition.

Where there is no principal mansion house within S. L. A., 1890, s. 10, or the settlement removes the fetter imposed by that section, then the words "No sale . . . of the Court" should be omitted.

Mansion
house.

Any charges made pursuant to S. L. A., 1882, ss. 5 or 18, or S. L. A., 1890, s. 11, will be made with the consent of the S. L. A. trustees, who will join in the instrument of charge (r. 155); the money raised must be paid to, or by the direction of, the trustees. S. L. A., 1882, s. 42, will, it is conceived, exonerate trustees who give their consent in good faith: and *see* note to L. T. A., 1897, s. 6 (7).

Mortgages by
tenant for life
of the settled
land.

If the registrar refuses to allow an entry to be made, restricting the power of the tenant for life to mortgage by deposit (*see* note to last Rule), the trustees should appeal to the Court, for it will hardly be safe to assume that the word "charge" in Form 6 includes a mortgage by deposit. It is conceived that where several persons are registered as proprietors (*e.g.*, trustees for sale) this question as to mortgages by deposit may be ignored.

The restriction in Form 7 will not be required where the assignment is within S. L. A., 1890, s. 4, or the tenant for life has reserved his statutory powers.

Form 7;
assignee of
life estate.

See as to Form 8, S. L. A., 1882, s. 56 (2).

The trustees can only be registered where they have a power of sale (L. T. A., 1897, s. 6. (1); Form 18), this may have been conferred on them by the settlement (*see* Form 16), or, where there is

Form 8;
where trustees
of the settle-
ment are
registered.

R. 71.

—
SETTLED
LAND.
—

an infant entitled in fee simple (S. L. A., 1882, s. 59), or as tenant for life, by S. L. A., 1882, s. 60.

The Form is also properly applicable to the case where persons holding land on trust for sale (S. L. A., 1882, s. 63) are registered, and the disposition on trust requires the consent of the tenant for life of the proceeds to be given to any sale: S. L. A., 1884, s. 6 (1).

Leaseholds.

Where, by reason of the absence of a power of sale, the S. L. A. trustees cannot be registered, and leaseholds already registered have to be conveyed to trustees on trusts, corresponding with uses affecting the freeholds, but so that the beneficial interest is not to vest in a tenant in tail by purchase, who dies under full age (S. L. A., 1882, s. 24 (3)), then the leaseholds must first be conveyed off the register (compare note to r. 81, *infra*) to the trustees in accordance with that section, and then transferred to the tenant for life in Form 20, as varied by Form 30. There can be no objection to the tenant for life being registered as proprietor of the leaseholds, for under the S. L. A. he can convey the legal term. In all cases where he is registered as proprietor of the freeholds, comprised in a settlement, he should also be registered as proprietor of the leaseholds.

Infants.

Where an infant is seised in fee (S. L. A., 1882, s. 59), it will be best if he became entitled under the will, or on the intestacy of a *quasi* settlor (r. 131, *infra*), that the personal representatives of the deceased (L. T. A., 1897, ss. 1, 2), who have a power of sale for purposes of administration, should remain on the register till either the infant attains full age, or a sale other than for purposes of administration is required. In the latter case, the sales will be conducted by the S. L. A. trustees, or other persons appointed under S. L. A., 1882, s. 60; and it may, in some cases, be advisable that the land should be transferred by the personal representatives to them, but the restriction in Form 8 will not be required till the infant attains full age.

See, also, as to persons appointed for a limited purpose under S. L. A., 1882, s. 60; note to L. T. A., 1897, s. 6 (1).

Guardianship
of infants.

If there are no trustees within S. L. A., 1882, s. 60, and the personal representatives refuse to retain the land in their names, it should be transferred to the infant, whose guardian, though he may act on behalf of the infant (L. T. A., 1875, s. 88), does not appear to have any general power to sell or mortgage the land, hence dispositions of the land should be restricted accordingly: *see*, as to guardians' powers of alienation, Simpson Infants, 2nd ed. pp. 402—409.

Where the infant is entitled as tenant for life, or becomes entitled in fee under a settlement, then the S. L. A. trustees should (except in the cases mentioned in the last note) be registered, but the restriction in Form 8 will not be required till he attains full age.

If the period, on the expiration of which the infant will attain

full age, is short, he may be registered, or the registration may well be delayed till he is of age, for on that occurrence the trustees' power of sale, unless express, will be extinguished and with it their right to be registered.

RR. 71—74.

SETTLED
LAND.

As to the insufficiency of Form 9, as regards mortgages by deposit, see note to Form 6, *supra*. As to the necessity for Form 9, see *Hatten v. Russell*, 38 Ch. D. 334, 345; *Mogridge v. Clapp*, 1892, 3 Ch. 382. Leases within S. L. A., 1890, s. 7, are valid, though there are no trustees.

Form 9 ;
where there
are no S. L. A.
trustees.

72. The settlement, whether consisting of one or of several documents, or a copy or abstract thereof, may be filed in the registry for safe custody and future reference. It shall not be referred to in the register, but shall be filed separately under the number of the title to which it relates.

The settle-
ment or an
abstract or
copy thereof
to be filed.

The latter part of this Rule shows that the "reference" in L. T. A., 1897, s. 6 (6), does not relate to a reference on the register, but the filed document will be used by the registrar whenever he inquires into the terms of the settlement.

The Rules do not in all cases forbid registration by reference to filed documents: *cf.* r. 40.

As to the meaning of "the settlement" in these Rules, see "The settlement." L. T. A., 1897, s. 6 (10); Interpretation Act, 1889, s. 31; r. 1 (2), *supra*; S. L. A., 1882, s. 2 (1), (2).

Freehold intermixed with Copyhold Land.

73. Where it is uncertain whether any land proposed to be registered is of freehold or of copyhold tenure, a note shall be entered in the register to the effect that it is doubtful whether the land is of freehold or of copyhold tenure, and that the registration is made without prejudice to any right that may arise if it is subsequently ascertained that the land is of copyhold tenure.

Note to be
entered where
tenure is
doubtful.

See L. T. A., 1875, s. 2, and note thereto.

It is conceived that a like note should be entered where it is uncertain whether the land is freehold or long leasehold.

Caution against Entry of Land on the Register under s. 60 of the Act of 1875.

74. A caution against entry of land on the register, lodged under the 60th section of the Act of 1875, shall be

Caution under
L. T. A.,
1875, s. 60.

RR. 74—78. in Form 11 in the First Schedule hereto, and shall be signed by the person lodging the caution or his solicitor, and shall contain an address for service in the United Kingdom, and shall refer to, and be accompanied by, sufficient particulars, by plan or otherwise, to identify on the proper Ordnance map the land to which the caution relates.

CAUTION
AGAINST
REGISTRATION
OF LAND.

See also as to cautions against registration of unregistered land : L. T. A., 1875, ss. 60—64, and notes.

As to cautions against registration of land already registered with a higher title : r. 188, *infra*.

Particulars to be furnished in case of incorporeal hereditaments.

75. In the case of a manor or an advowson or other incorporeal hereditament, the names of the county and parish or place and such other particulars (if any) as the registrar may deem necessary shall be furnished.

As to transfers of advowsons after 1898, see Benefices Act, 1898.

Form of statutory declaration in support of caution.

76. The statutory declaration in support of the caution shall be in Form 12 in the First Schedule hereto, and shall be delivered with the caution.

This form is also made applicable to cautions against dealings with registered land : r. 188, *infra*.

Form of notice under caution.

77. The period to be limited by the notice to be served on the person lodging the caution under the 62nd section of the Act of 1875 shall be fourteen days, or such other period (not being less than seven days) as the registrar may, under special circumstances, direct. The notice shall be in Form 13 in the First Schedule hereto.

Purchaser in compulsory district may register a disposition within fourteen days of his purchase, and the disposition to have effect as if made after registration.

Conveyance and Mortgage prior to Compulsory Registration.

78. When a conveyance on sale of land in any county or part of a county in which registration of title is compulsory on sale, and a disposition thereof by the purchaser are delivered for registration within fourteen days after the date of the conveyance, the disposition shall have the same effect in every respect as if it had been executed subsequently to the registration of the purchaser as pro-

prietor of the land. If the land is leasehold, the words "conveyance on sale" shall apply to a grant or assignment of a lease or sub-lease, and the word "purchaser" shall apply to a grantee, lessee, or assignee.

R. 78.

CONVEYANCE
AND DISPOSI-
TION BEFORE
COMPULSORY
REGISTRATION.

See also r. 153, *infra*.

A purchaser in a compulsory district is not to acquire the legal estate "unless or until he is registered" (L. T. A., 1897, s. 20 (1); rr. 58—60). The object, however, of this Rule cannot well be to enable a legal mortgage to be made in a compulsory district in favour of a vendor who allows part of the purchase-money to remain on mortgage, for this could have been done without the Rule, as the legal estate (not passing to the purchaser) would remain in the vendor, and the purchaser would register in right of his equity of redemption. Where, however, the mortgagee applies for registration under this Rule, he will obtain a registered charge in place of his legal mortgage.

Legal
mortgage.

The "dispositions" under this Rule would include conveyances on a sub-sale or leases, as well as mortgages.

As the date of application for registration with a possessory title fixes the date on which the land is deemed to be registered (r. 19), a vendor who intends to rely on a legal mortgage must ascertain from the list of pending applications (r. 14) that no application has been made before the mortgage to him is executed; for, if executed after, he would be relegated to the position of a person dealing under L. T. A., 1875, s. 49, and the registration of the purchaser would deprive him of his legal estate. Though the consent of a vendor is necessary to an application to register where a purchaser does not take a conveyance, yet, where such conveyance is taken before actual registration, there seems nothing to prevent the sole application of the purchaser made before the date of the conveyance from having the above retrospective effect; hence the vendor must search the list of applications.

It seems that under the Rule the purchaser may treat the land as registered, and execute a conveyance or mortgage which the registrar will give effect to (as if they had been executed in the prescribed forms and the land had been registered) by entry on the register after registration of the land: and see rr. 101, 121—126.

Effect of rule.

R. 79.

TRANSFERS OF
LAND.

PART III.

REGISTERED DEALINGS WITH REGISTERED LAND.

Transfers of Land.

Form of
transfer.

79. A transfer of the whole of the land comprised in a title shall be made by an instrument in Form 14 in the First Schedule hereto.

See L. T. A., 1875, s. 29; L. T. A., 1897, ss. 9, 16.

Transferee
need not
execute.
Query,
whether book
of signatures
should not be
kept.

Form 14 ;
covenants for
title.

As the transferee need not execute the instrument, there will be no signature at the registry with which the registrar may compare a document purported to be executed by the registered proprietor unless a book of signatures is kept for reference.

Assuming that the vendor was entitled to the fee simple off the register, Form 14, as it stands, is only capable of passing a fee estate until registration : L. T. A., 1875, s. 29. As to covenants for title, see L. T. A., 1897, s. 16 (3), and note. Where the legal estate off the register is relied on to enable the purchaser to pay his purchase-money before registration, the covenants should be extended to cover interests affected by registration. There is also a doubt as to whether the covenants would be construed to extend to matters which are by s. 18 of the L. T. A., 1875, declared not to be incumbrances.

Suggested
variations in
form of
transfer.

It is suggested that in all cases where the registered proprietor is able to convey the fee simple off the register, and a separate deed is not required, the common form of a transfer should run :—

Form of
transfer to a
purchaser in
fee simple.

(*Heading.*) (*Date.*) In consideration of the sum of — pounds (£ —) now paid to A. B., of, &c., by C. D., of &c. (the receipt of which sum the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby conveys and transfers unto and to the use of the said C. D., in fee simple, the land comprised in the title above referred to. Provided always that, notwithstanding anything to the contrary in the Land Transfer Act, 1897, contained, the statutory covenants for title implied in these presents shall have effect as well with respect to estates, interests, charges, or rights included in the effect of registration as to those excluded from such effect, and also with respect to every liability, interest or right which is, by section 18 of the Land Transfer Act, 1875, as amended,

declared not to be an incumbrance, except (*set out exceptions, e.g.*) land tax, tithe rentcharge, and occupation leases or agreements. RR. 79—81.
TRANSFERS OF
LAND.

IN WITNESS, &c.

As to the words "in fee simple," and the receipt clause, *see* note to L. T. A., 1897, s. 16, and r. 146, *infra*; the receipt clause might be endorsed, but it will be shorter to have it in the deed.

80. A transfer of part of the land comprised in a title shall be made by an instrument in Form 15 in the First Schedule hereto, and shall also (subject to the provisions of Rule 150) be accompanied by a plan showing the land transferred: and the plan shall be signed by the transferor and by or on behalf of the transferee. Form of
transfer of
part of land
comprised in
a title.

Rule 150 enables a reference to the existing plan, where the part dealt with can be clearly defined by the reference.

As to transfers of leaseholds, *see* r. 91. Where part of the land in lease only is transferred, a separate deed, being a conveyance off the register and containing the cross covenants, may perhaps be desirable: L. T. A., 1875, s. 34, and note; *see*, however, r. 86, *infra*. Transfers of
part of
leaseholds.

81. A transfer of land to the uses of a settlement shall be made by an instrument in one of the Forms 16 to 22 in the First Schedule hereto, with the addition of the proper inhibitions or restrictions to be entered in the register, according to the principles stated in Rule 70 of these Rules, and the registrar shall, on receipt thereof, register the transferee named therein as the proprietor of the land, and shall enter in the register the inhibitions and restrictions contained in the transfer. Forms of
transfers to
uses of a
settlement.

See also as to settled land, rr. 68—72, 131—135; and L. T. A., 1897, s. 6.

This Rule only applies where the land to be transferred is already registered (L. T. A., 1897, s. 6 (3)), and supplies the forms required by that sub-s.

As to the mode in which registered leaseholds should be transferred on trusts corresponding with the uses, *see* note to r. 71, *supra*; none of the forms mentioned in this Rule (r. 81) carry out what is required by S. L. A., 1882, s. 24 (3), though the effect might have been produced by the Rules (*see* suggested amendment, *infra*). Perhaps, until the Rules are altered, the registrar may permit words Transfers of
leaseholds on
trusts cor-
responding to
uses.

R. 81.
TRANSFERS OF
LAND.

similar to those in S. L. A., 1882, s. 24 (3), to be inserted in the transfers, as the settlement is referred to in the scheduled forms; but it will make no difference as regards stamp duty: r. 164. It would, however, be straining the language of L. T. A., 1897, s. 6 (3), and of this Rule, to make the reference to transfers to the *uses* of a settlement relate to a transfer to trustees of *leaseholds* on trusts corresponding with the uses; and there is no Rule (*cf.* r. 43) which makes this Rule (r. 81) applicable to leaseholds. It may, perhaps, be contended that Form 21 enables trustees to be registered as proprietors of settled leaseholds, but this could only be so where the trustees have a power of sale: *see* note to r. 71, *supra*. Moreover, if Form 21 were alone relied on, the representatives of a tenant in tail who died under full age would claim the leaseholds; and *cf.* rr. 91—93, *infra*.

Conveyances
of freeholds
to the uses of
a settlement.

The forms mentioned in this Rule do not strictly carry out the requirements of S. L. A., 1882, s. 24 (2), for though there is a presumption against an increase of charges (*Hindle v. Taylor*, 5 De G. M. & G. 577; *Trew v. The Perpetual Trustee Co.*, 1895, A. C. 264), yet the presumption may be rebutted; hence (as in the case of leaseholds, *see* note to r. 71) the practice will, unless the registrar allows the necessary alterations, be to take a conveyance off the register first in accordance with the section, and then to take a transfer in one of the prescribed forms: *see* also note to Form 19, *infra*. It is suggested that, on any new issue of Rules, they should provide that the forms should operate in the manner respectively directed in sub-ss. 2 and 3 of s. 24 of the S. L. A., 1882, and that the legal estate in leaseholds may be conveyed to the tenant for life.

Suggested
amendment.

If the registrar will permit (r. 276), it is suggested that the form should be:—

Form of
transfer of
registered
freeholds
purchased
with capital
money to the
uses of a
settlement.

(*Heading.*) (*Date.*) In consideration of the sum of — pounds (£ —) now paid by the direction of A. B., of, &c., by C. D., of, &c., and E. F., of, &c., to G. H., of, &c., out of capital money arising under a settlement, dated, &c., and made between, &c. (*or* created by the will of, &c.), under which the said A. B. is (*or* has the powers of a) tenant for life in possession under the Settled Land Acts, 1882 to 1890, and the said C. D. and E. F. are trustees for the purposes of the same Acts (the receipt of which sum the said G. H. hereby acknowledges), the said G. H., as beneficial owner, hereby transfers and conveys unto the said A. B. all the land comprised in the title above referred to: To hold unto the said A. B. in fee

simple : to the Uses, upon the trusts and subject to the powers and provisions which under the said settlement or by reason of the exercise of any power of charging therein contained are now subsisting or capable of taking effect with respect to freehold hereditaments which are subject to the limitations of that settlement, but not so as to increase or multiply charges or powers of charging. Provided always that notwithstanding anything to the contrary in the Land Transfer Act, 1897, contained, the statutory covenants for title implied in these presents shall have effect as well with respect to estates, interests, charges, or rights included in the effect of registration, as to those excluded from such effect, and also with respect to every liability, interest, or right which is by section 18 of the Land Transfer Act, 1875, as amended, declared not to be an incumbrance, except (*set out exceptions, e.g.*) land tax, tithe rentcharge, and occupation leases or agreements.

R. 81.

TRANSFERS OF
LAND.

And the said C. D. and E. F. hereby apply for the registration of the following restriction and inhibition, namely :—*Restriction* : Until further order no transfer of the land is to be made except on sale, exchange, or partition, and the consideration money is to be paid to the said C. D. and E. F. or into Court, and no charge or lien by deposit of certificate is to be created without the consent of the said C. D. and E. F. *Inhibition* : On the death of the said A. B. no entry is to be made until further order.

IN WITNESS, &c.

See also as to the above form, notes to r. 79, *supra*. It might be neater to place the proposed restriction and inhibition in a schedule. The restriction against mortgages by deposit will not impede completion, as the trustees must necessarily receive the purchase-money.

Form 16 is only applicable where the trustees have a power of sale (*see* the form itself, also note to r. 71, and Form 18), and inasmuch as it does not contemplate the case of an infant tenant for life, will rarely, if ever, be used : *see* S. L. A., 1882, s. 56(2). The tenant for life will not be well advised to place the trustees on the register (*see* S. L. A., 1882, ss. 50, 51, 53), and the trustees may rightly object to having the burden of transferring cast on them.

Form 16 ;
where trustees
are to be
registered.

R. 81.

TRANSFERS OF
LAND.Form 17;
where donees
of overriding
power are to
be registered.

Form 17 should not be used unless all family charges under prior settlements have been cleared off, for a tenant for life whose estate is restored (*Re Wright's Trustees and Marshall*, 28 Ch. D. 93) may have power to displace the charges under S. L. A., 1882, s. 20, or would have power, if the decision in *Re Marquis of Ailesbury and Lord Iveagh*, 1893, 2 Ch. 345, were taken advantage of; while the exercise of the joint power would not have that effect. Moreover, the inhibition in Form 10 would not be sufficient if family charges under a prior settlement were on foot. Further, the exercise of the joint power does not pass any legal estate vested in the trustees.

The "overriding power of appointment" (*see* L. T. A., 1897, s. 6(1), and Form 10) means a power which overrides all the interests created by the settlement which confers it, and must be in respect of the fee simple; thus, it seems, excluding a power to appoint the equitable term in leaseholds held on trusts corresponding to the uses.

Form 18;
transfer by
personal
representative
to tenant for
life or to
trustees.

Form 18 shows that the Rules only contemplate a transfer to trustees where the trustees have a power of sale; and *see* notes to Form 16, *supra*, and to r. 71 on Form 8.

Form 19;
the like,
transfer to
donees of
overriding
power.

As to Form 19, *see* notes, *supra*, to Form 17. Neither of the Forms 17 or 19 are strictly conveyances to the uses of a settlement, hence the concurrence of the S. L. A. trustees required by L. T. A., 1897, s. 6 (3), has been dispensed with; and unless there is a conveyance off the register as well, it may perhaps be doubted whether any legal estate in the successive interests in the land to take effect, subject to the joint power, will be passed: but *see* L. T. A., 1897, s. 6 (3).

Form 20;
transfer on
purchase with
capital
money, tenant
for life
registered.

Form 20 will, when modified (*see supra*), be the usual and proper form to be used, where freeholds are purchased with capital money.

Form 21;
the like,
trustees being
registered.

Form 21 must be confined to the case where trustees have a power of sale: *see* note to Form 16, and *cf.* Form 18. As to Form 21 not enabling S. L. A. trustees with no power of sale to be registered, in respect of settled leaseholds, *see* second note, *supra*, on this Rule.

Form 22;
the like,
donees of
joint power
being regis-
tered.

As to Form 21, *see* notes to Forms 17 and 19, *supra*. Inasmuch as the object of Form 22 is to bring into settlement land which, except so far as the contract for sale renders it subject to the settlement, was hitherto not in any way subject to the settlement, it is clearly a mistake, due to the reference to Form 19, for Form 22, in effect to recite that the land to be conveyed is already subject to the uses of the settlement.

The heading rightly relates to the land to be transferred, but the Form should run "In consideration under which *certain freehold land* is limited to such uses" It should be observed that the land already in settlement will not necessarily be registered land, hence should be referred to generally.

82. Where registered land has been brought into settlement, and the existing registered proprietor is the tenant for life under the settlement, and elects to remain the registered proprietor, he must apply for the registration of a restriction and inhibition in Form 6 in the First Schedule hereto, or such other restriction or inhibition as may be required having regard to the terms of the settlement and the Settled Land Acts.

RR. 82—84.

TRANSFERS OF LAND.

Settlement by registered proprietor under which he is tenant for life.

The legal fee off the register should, by the settlement or by a conveyance to the uses of the settlement, be split up among the successive owners.

As to the option of the tenant for life, *see* L. T. A., 1897, s. 6 (1), and note; it is submitted that where the tenant for life is not under disability, it will not, as a rule, be proper for him to do otherwise than elect to be registered: *see* S. L. A., 1882, ss. 50, 51, 53.

Option of tenant for life.

For notes on Form 6, *see* r. 71.

As to the meaning of "tenant for life" in these Rules, *see* note to L. T. A., 1897, s. 6 (1); Interpretation Act, 1889, s. 31; r. 1 (2) *supra*, Forms 16—20; S. L. A., 1882, ss. 2 (5), (6), (7), 58, 59, 62; S. L. A., 1884, s. 7.

"Tenant for life."

83. A transfer of land in consideration or partly in consideration of a rent may be made by the registered proprietor of land by an instrument in any form legally sufficient for the purpose of which the registrar may approve. The transferee shall be registered as the proprietor of the land, and the rent shall be entered in the Charges Register as an incumbrance. Such evidence as the registrar may require that the registered proprietor has power to transfer in consideration of a rent shall be furnished.

Transfer in consideration of a fee farm rent.

As to the power of a tenant for life to sell for building purposes (S. L. A., 1882, s. 2 (10) (iii)) in consideration of a rentcharge, *see* S. L. A., 1890, s. 9.

Sale in consideration of a rentcharge by tenant for life.

The rent may, and should, because of the powers and remedies for recovering it (*cf.* C. A., 1881, s. 44), be entered in the Charges Register by reference to the instrument creating the rent: r. 40. The land out of which the rent issues must be identified on the ordnance map: r. 63; and *see* next Rule.

Registration of a rentcharge.

84. The transferor shall be registered as the proprietor of the rent under a separate title, and a reference to that title shall be made in the title of the transferee.

Registration of transferor on transfer in consideration of fee farm rent.

See note to last Rule.

RR. 85—87.

**TRANSFERS OF
LAND.****Transfer of
land subject
to existing fee
farm rent.**

85. On a transfer of freehold land subject to an existing rent, covenants similar to those implied by section 39 of the Act of 1875 on a transfer of leaseholds shall be implied, but such implication may be negatived by adding suitable words to the instrument of transfer as in Form 30, in the First Schedule hereto, and in that case a note thereof shall be entered in the register. If it is desired to substitute modified covenants for the covenants implied by section 39, the necessary additions may be made to the transfer.

**Implied
covenants.**

The covenants implied under L. T. A., 1875, s. 39, are the qualified covenant that the rent has been paid and the lessee's covenants performed up to date of transfer, and that the transferee will pay the rent, &c.

**Power to add
covenants of
indemnity to
instruments
of transfer.**

86. On a transfer of land subject to a mortgage, charge, or other incumbrance, covenants by either party to pay the money owing, and to indemnify the other party, may be added to the instrument of transfer, and, if the parties desire it, may be referred to in the register.

Though these covenants of indemnity may be added to the instrument of transfer, they will, in many cases, be contained in a separate deed, as the instrument of transfer must be filed at the registry.

**Transfers of
land (a) with-
out mines ;
(b) with cer-
tain specified
mines ;
(c) with mines
except certain
specified
mines.**

87. A transfer of land without the mines and minerals shall be made by an instrument in Form 23 in the First Schedule hereto. A transfer of land with certain specified mines and minerals shall be made by an instrument in Form 24 in the First Schedule hereto. A transfer of land with the mines and minerals, except certain specified mines and minerals, shall be made by an instrument in Form 25 in the First Schedule hereto. The transferee shall be registered as proprietor of the land, with a note to the effect that the mines and minerals (or that the mines and minerals, other than certain specified mines and minerals; or that certain specified mines and minerals, as the case may be) are excepted. The transferor shall, if entitled to the excepted mines and minerals, be registered as the pro-

prietor thereof, with an absolute, qualified, or possessory title, according to the circumstances of the case.

RR. 87—90.

TRANSFERS OF
LAND.

As to the meaning of "mines and minerals," see r. 1 (4), *supra*.

See, also, as to the registration of minerals severed from the land, r. 64.

"Mines and
minerals."

And see L. T. A., 1875, ss. 18 (4), (5), 29 and 49 as amended; the compulsory provisions do not apply to minerals severed from the surface: L. T. A., 1897, s. 24 (1).

Registration
of excepted
minerals.

88. A transfer of mines and minerals without the land shall be made by an instrument in Form 26 in the First Schedule hereto. A transfer of certain specified mines and minerals without the land shall be made by an instrument in Form 27 in the First Schedule hereto. A transfer, without the land, of the mines and minerals, except certain specified mines and minerals, shall be made by an instrument in Form 28 in the First Schedule hereto. The transferee shall be registered as the proprietor of the mines and minerals transferred, with an absolute, qualified, or possessory title, according to the circumstances of the case: and a note shall be entered against the transferor's title to the effect that the mines and minerals (or that certain specified mines and minerals; or that the mines and minerals, other than certain specified mines and minerals, as the case may be) have been transferred.

Transfers of
(a) mines
without the
land; (b) spe-
cified mines
without the
land;
(c) mines,
except certain
minerals.

See notes to last Rule.

It is submitted that this Rule enables mining easements to be granted separately from the land by means of a registered disposition: r. 1 (4), *supra*; see, as to other easements, note to L. T. A., 1875, ss. 18, 49.

89. If in Forms 23 to 28 a part only of the land or of the mines and minerals under the land comprised in one title is transferred, the forms shall be modified accordingly.

Modification
of forms
where part
only of land
or mines
transferred.

90. A transfer of land in exercise of a power of sale contained in a registered charge shall be made by an instrument in Form 29 in the First Schedule hereto.

Transfer on
sale by
chargee.

The transfer made in exercise of the chargees' power of sale operates as a conveyance in professed exercise of the power con-

Sale by
registered
chargee of the
land under his
power of sale.

RR. 90—93. ferred by ss. 19 to 22 of the C. A., 1881: *see* L. T. A., 1897, s. 9 (1).
 TRANSFERS OF As all instruments of charge are to be made by deed (Forms 39
 LAND. to 41, r. 156), the power of sale, subject to an entry to the con-
 trary (L. T. A., 1875, s. 27), will be incident to nearly every
 charge: C. A., 1881, ss. 19, 2 (vi); for an exception, *see* r. 116,
 infra.

Transfer of
leasehold
land.

91. A transfer of leasehold land shall be made by an instrument in Form 30 in the First Schedule hereto, and all or any of the covenants implied by the 39th section of the Act of 1875 on a transfer of leasehold land may, if it is desired, be negatived by adding suitable words to the instrument of transfer, and in that case an entry negativing the implied covenants shall be entered in the register. If it is desired to substitute modified covenants for the covenants implied by section 39, the necessary additions may be made to the transfer.

See note to r. 80, *supra*, and L. T. A., 1875, s. 34.

Effect of
transfer of
leasehold land
with absolute
or qualified
title.

92. A transfer for valuable consideration of leasehold land registered with an absolute or qualified title shall, when registered, have the effect given by section 35 of the Act of 1875 to such a transfer of leasehold land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held: save that, where any estate, right, or interest is excepted from the effect of registration, the transfer shall not affect or prejudice the enforcement of any estate, right, or interest appearing by the register to be so excepted.

Compare L. T. A., 1875, s. 31.

Effect of
transfer of
leasehold land
with pos-
sessory title.

93. A transfer for valuable consideration of leasehold land registered with a possessory title shall, when registered, have the same effect as a transfer for valuable consideration of the same land registered with an absolute title, save that the transfer shall not affect or prejudice the enforcement of any right or interest (whether in respect of the lessor's title or otherwise) adverse to or in derogation of the title of the first registered proprietor,

and subsisting or capable of arising at the time of the registration of such proprietor.

RR. 93—96.
—
TRANSFERS OF
LAND.
—

Compare L. T. A., 1875, s. 32.

94. The provisions as to land certificates of section 29 of the Act of 1875, as amended by section 8 of the Act of 1897, shall apply to leasehold land.

Certificates of
leasehold
land.

The sections provide for the issue of certificates of the land transferred and of the land retained.

As to the procedure on a sale of one title in lots, see L. T. A., 1897, s. 16, note.

95. A transfer of land to an incorporated company or other corporation, sole or aggregate, shall be made by an instrument in Form 31 in the First Schedule hereto, and shall refer to the licence in mortmain or statute enabling the corporation to acquire or hold the land; and if the licence or statute contains any limit to the extent of land which may be conveyed or held, or any provisions as to the purposes for which it may be used, a statement showing that the land transferred, together with any land already acquired or held under such licence or statute, does not exceed such limit, and, showing also the purposes for which the land is to be used, shall be added. Such statement shall be proved by statutory declaration or otherwise, as the registrar may direct. But a transfer of land from the Ecclesiastical Commissioners to an incumbent or other ecclesiastical corporation shall be exempt from the provisions of this Rule.

Transfers to
corporations.

See also r. 97, *infra*.

Where a company is incorporated under the Companies Acts, but is not a company within Comp. Act, 1862, s. 21, then it seems that Form 31 should refer to the certificate of incorporation and to the Companies Acts under which it is incorporated: see Comp. Act, 1862, ss. 18, 191. In the case of a company not formed for gain, then the form should refer also to the sanction or licence of the Board of Trade: Comp. Act, 1862, s. 21, and see next Rule.

Companies
incorporated
under Com-
panies Acts.

As to transfers to ecclesiastical corporations, see rr. 98—100.

Ecclesiastical
corporations.

96. A transfer of land for charitable uses within the meaning of the Mortmain and Charitable Uses Act, 1888,

Transfer for
charitable
uses.

RE. 96, 97. shall, except in cases exempted by section 7, sub-section (i.), of the said Act, be made by an instrument in Form 32 in the First Schedule hereto, and shall refer to the statute or other authority under which it is made; and where such statute or authority contains any limit to the extent of land which may be conveyed or held, or any provisions as to the purposes for which it is to be used, a statement showing that the land transferred, together with any land already acquired or held under such licence or statute, does not exceed such limit, and showing also the purposes for which the land is to be used, shall be added. Such statement shall be proved, by statutory declaration, or otherwise, as the registrar may direct.

Universities
and colleges.

Section 7 (i) of the M. & C. U. Act, 1888, exempts assurances to universities and colleges from Part II. of the Act, which regulates the conditions under which land may be conveyed to charitable uses.

Exemption
from enrol-
ment in
central office.

As to the exemption of registered dispositions of land from enrolment at the Central Office, *see* M. & C. U. Act, 1888, s. 9.

Registration
of transfers to
corporations
and charitable
uses.

97. A transfer of land under either of the two preceding Rules shall not be registered until the registrar is satisfied that such transfer is in accordance with the law relating to mortmain or charitable uses. And where it shall appear to the registrar that a right of pre-emption, or reverter, or a restriction on alienation by the transferee, or any other like right or restriction exists, or may exist, he shall enter notice of any such right, or a restriction or inhibition protecting any such restriction in such manner and form as he shall think fit.

Rights of pre-
emption or
reverter.

See M. & C. U. Acts, 1888, 1891, and 1892.

The benefit of the right of pre-emption or reverter may, if it is annexed to land of a registered proprietor, be entered in the register: r. 3, and *see* amendment of L. T. A., 1875, s. 18, last paragraph. The notice of the rights will be entered in the Charges Register: r. 7, *supra*.

Restraint on
alienation.

As to restraints on alienation, *cf.* L. T. A., 1897, s. 9 (4) (i). As to a married woman restrained from anticipation who has the powers of a tenant for life, *see* S. L. A., 1882, s. 61 (6).

As to licences to assign, *see* r. 52.

98. Where under or by virtue of any Act of Parliament a conveyance to the Ecclesiastical Commissioners would have the effect of vesting any land, either immediately or at a subsequent time, in an incumbent or any other ecclesiastical corporation sole and his successors, the registrar may, on production of a transfer to the Ecclesiastical Commissioners, together with a certificate by them in Form 33 in the First Schedule hereto, or to the like effect, enter such incumbent, or other ecclesiastical corporation, and his successors, as registered proprietor.

RR. 98—100.

TRANSFERS OF LAND.

Certificate that land transferred to Ecclesiastical Commissioners has by the transfer become vested in another ecclesiastical corporation.

See Church Building Act, 1845, s. 13 (8 & 9 Vict. c. 70), as to sites for churches, burial ground, residences and glebe; also Church Building Act, 1846 (9 & 10 Vict. c. 68), as amended by Church Building Act, 1851, s. 28 (14 & 15 Vict. c. 97), as to burial chapels and lodges.

See also r. 193, *infra*.

99. When under or by virtue of the New Parishes Acts, 1843 to 1884, any land would upon the creation of a new parish become vested in an incumbent and his successors, and the preceding Rule shall be inapplicable, the registrar may on production of the land certificate, and the consent of the registered proprietor of the land, and of a certificate by the Ecclesiastical Commissioners, in Form 34 in the First Schedule hereto, or to the like effect, enter such incumbent as registered proprietor. If the registered proprietor refuses to give his consent, or his consent can only be obtained after undue delay or expense, the registrar may, after due notice under these Rules to the proprietor, and such further evidence (if any) as he may deem sufficient, make the entry without production of the consent.

Vesting of land in incumbent on creation of a new parish.

See 6 & 7 Vict. c. 37; 7 & 8 Vict. c. 94; 19 & 20 Vict. c. 104; 32 & 33 Vict. c. 94; and 47 & 48 Vict. c. 65.

Compare r. 101, *infra*.

New Parishes Acts, 1843, 1844, 1856, 1869 and 1884.

100. Where by a scheme of the Ecclesiastical Commissioners and an Order in Council ratifying the same, or other instrument taking effect on publication in the London Gazette made under and pursuant to the provisions of

Power to register ecclesiastical corporation or Ecclesiastical Commis-

RR. 100, 101. any Act of Parliament relating to or administered by the
 TRANSFERS OF Ecclesiastical Commissioners, or by any conveyance autho-
 LAND. rised by any such Act, any land shall purport or be
 sioners in declared to be transferred or vested to or in the Ecclesias-
 whom land tical Commissioners, or to or in any ecclesiastical corpora-
 has become tion, aggregate or sole, or any person, and it shall be
 vested under necessary or deemed desirable by the Ecclesiastical Com-
 a scheme. missioners to enter the transferee on the register, the
 registrar may, on production of the land certificate, and
 the consent of the registered proprietor of the land and of a
 certificate by the Ecclesiastical Commissioners, in Form 35
 in the First Schedule hereto, or to the like effect, and
 of the Queen's printer's copy of the Gazette containing
 such publication, enter such ecclesiastical corporation or
 the Ecclesiastical Commissioners, or such person, as regis-
 tered proprietor. The consent of the registered proprietor
 to the scheme, testified by his signing or sealing the same,
 shall be a sufficient consent for the purposes of this Rule,
 and the Queen's printer's copy of the Gazette containing
 it shall be sufficient evidence of such consent.

For some cases where a ratified scheme on publication operates
 to vest the property, *see* Ecclesiastical Commission Act, 1868, ss. 6,
 12 (31 & 32 Vict. c. 114).

See also r. 193, *infra*.

Power to
 correct
 register in
 accordance
 with para-
 mount title.

101. When the power of disposing of registered land
 has, by the operation of any statute or statutory power or
 by order of Court or by paramount title, become vested in
 some person other than the registered proprietor (as, for
 instance, in the case of a deed poll executed under section 77
 of the Lands Clauses Consolidation Act, 1845, or of a
 declaration vesting an estate contained in or made under
 or by virtue of any statute, or on sale by a mortgagee,
 with a title paramount to the title registered) and the
 registered proprietor refuses to execute a transfer, or his
 execution of a transfer cannot be obtained, or can only be
 obtained after undue delay or expense, the registrar may,
 after due notice under these Rules to such proprietor, and
 on production of the land certificate, or office copy regis-

tered lease, and such evidence as he may deem sufficient, make such entry in or correction of the register as under the circumstances he shall deem fit.

RR. 101—
103.

TRANSFERS OF
LAND.

This rule is also applicable to charges (r. 120, *infra*), and is extended to the case where the estate of the official receiver or trustee in bankruptcy is divested: r. 144, *infra*.

As to vesting declarations, see L. T. A., 1875, s. 49, and note thereto; as to vesting orders, see T. A., 1893, ss. 26—41.

As to a sale by a paramount mortgagee, see L. T. A., 1875, s. 8, and note thereto. As to the power to compel production of certificates, see L. T. A., 1897, s. 8 (1). See also rr. 16, 208.

Sale by
paramount
mortgagee.

This Rule is designed to enable the registered title to be altered, so as to correspond with the legal (L. T. A., 1875, s. 49, note) or equitable title off the register. The Rule, however, would not enable any entry to be made which the Court, under its power to rectify (L. T. A., 1875, s. 95; L. T. A., 1897, ss. 7, 12), would not have jurisdiction to order. Thus, after a transfer for value, the title of any beneficiary defeated by such transfer (L. T. A., 1875, s. 30) could not be replaced, though the rights of a *cestui que trust* of the registered proprietor could be given effect to. For instance, if during a minority S. L. A. trustees were registered, the tenant for life, on attaining full age, could and should insist on being registered.

Rectification.

It is obvious that the power of disposition mentioned in the Rule does not mean the power of the registered proprietor as such, nor the power conferred by L. T. A., 1897, s. 9 (6).

102. A transfer of land with restrictive conditions annexed thereto under section 84 of the Act of 1875, as amended by the Act of 1897, shall be made by an instrument in Form 36 in the First Schedule hereto. A copy of the conditions or a document containing them shall be delivered at the registry, unless they are contained in the transfer.

Transfer
subject to
restrictive
covenants.

See, also, as to restrictive covenants, rr. 7, 18, 23, 26.

103. When any registered land is exchanged for other registered land, the exchange shall be made by an instrument in Form 37 in the First Schedule hereto. Where an exchange is made under an order or award of the Board of Agriculture, the production of such an order or award, or a sealed copy thereof, shall be a sufficient autho-

Exchange of
registered
land.

RR. 103—
106.

TRANSFERS OF
LAND.

rity to the registrar to make such entries and alterations in the register as are required to complete the exchange.

As to exchanges under an award, *see* note to next Rule.

Exchange by
order of
Board of
Agriculture.

104. When the exchange is made by the order or award of the Board of Agriculture, and the lands to be exchanged are not in the same condition with regard to registration—as, for instance, if one estate is registered with absolute title and the other with possessory title, or if one estate is subject to incumbrances and the other is not, or is subject to different incumbrances, or if one estate is already on the register and the other is not—the registrar shall carry out the order or award in such manner as may be best calculated to give effect in the register to the provisions of section 147 of the Inclosure Act, 1845, or any similar provision for the time being in force.

An exchange under the Inclosure Act, 1845, s. 147, cannot be impeached by reason of any defect in title of the person on whose application the same is made. The title of one piece of land is wholly shifted to the other.

Partition of
registered
land.

105. A partition shall be made by an instrument in Form 38 in the First Schedule hereto, and where a partition is made by order of the Board of Agriculture, analogous proceedings to those above provided in the case of exchanges shall be adopted.

See note to last Rule.

Charges.

Charges and
stipulations
which may be
inserted
therein and
entered in the
register.

106. A charge on registered land shall be made by an instrument in Form 39 in the First Schedule hereto, with such variations as are mentioned in the notes to that Form, and if there are added thereto any of the special stipulations comprised under the heads A and B in the note to that Form, they shall be entered in the register.

See L. T. A., 1875, ss. 22—28; L. T. A., 1897, s. 9; and note to r. 146.

Some of the stipulations under heading "C," notably that for reduction of interest on punctual payment, it will be found desirable to re-model: *see* next Rule. There would seem to be no objection to using the common forms now in use in place of the stipulations under heading "C," as these apparently will not be entered in the register. A covenant to insure buildings against fire would come under this heading: and *see* r. 147.

If a registered charge alone is found to give sufficient security (*see* notes to L. T. A., 1875, ss. 22—28), it will be undesirable to take a conveyance of the legal estate, either by means of the instrument of charge or by a separate deed, as it would mean that on each transfer of the charge a conveyance of the legal estate would be necessary. But this would hardly be an objection (*see*, however, r. 252) if the instrument of charge may, *e.g.*, be varied to correspond with the statutory mortgage in Third Schedule to C. A., 1881, so as to pass the legal estate, for in this case the form of transfer (No. 44) may equally be varied to correspond with the statutory transfer of mortgage: C. A., 1881, Third Schedule, Part II. However, it by no means follows that the registered proprietor who has power to create a registered charge will have power to create a mortgage off the register.

RR. 106—
108.

CHARGES.

Certain stipulations not to be entered on the register.

Whether legal estate off the register should be conveyed when a registered charge is taken.

107. In addition to or in substitution for the stipulations permitted by Form 39, any other stipulations of which the registrar shall approve may be added to a charge; but no stipulation shall be so added referring to matters the entry of which is inconsistent with the principles on which the register is to be kept.

Additional stipulations which may be inserted in charges.

The effect of this Rule is that wherever any stipulation not contained in Form 39, headings "A" and "B," is to be used, the draft should be submitted to the registrar for approval. If any stipulation is insisted on which the registrar will not permit to be entered on the register, or in the charge, as the case may be, the parties must either appeal or embody the stipulation in a mortgage deed (*see* note to r. 222) to be executed with the instrument of charge: and *see* note to last Rule; also r. 147, *infra*. When it cannot be inserted under "A" or "B" it should, if possible, be inserted under "C," for the certificate of charge contains a copy of the charge.

Registrar's veto as regards stipulations to be entered in the charge.

As to what may not be contained in a charge, *see* L. T. A., 1897, s. 9 (4), and r. 115, *infra*. For an additional common form stipulation as regards mortgagors' leases, *see* note to L. T. A., 1875, s. 50.

Stipulation as to mortgagors' leases.

108. A charge to secure an annuity or to secure future advances shall be made by an instrument in Forms 40 or 41

Charges to secure annuities or future advances.

RR. 108— respectively in the First Schedule hereto, and Forms 40
113. or 41 may be combined with Form 39.

CHARGES.

See as to annuities, L. T. A., 1897, s. 9 (3); and as to future advances, L. T. A., 1875, s. 22; L. T. A., 1897, s. 8, last paragraph; and notes to both sections.

Charge on
part of land
included in a
title.

109. When part only of the land comprised in a title is included in a charge, the part so charged shall (subject to the provisions of Rule 150) be identified by a plan, which shall be signed by both parties.

Rule 150 enables the original plan to be used where a reference thereto will sufficiently identify the property.

Foreclosure of
charges.

110. When the proprietor of a registered charge obtains an order for foreclosure absolute, the order, or an office copy thereof, shall be delivered to the registrar, who shall thereupon enter the proprietor of the charge as proprietor (subject to prior charges) of the land, the equity of redemption in which is foreclosed.

See L. T. A., 1875, s. 26.

A new land certificate will be granted on foreclosure: r. 207, *infra*.

Alteration of
terms of a
charge.

111. An application to alter the terms of a registered charge under section 9 (5) of the Act of 1897 shall be in Form 42 in the First Schedule hereto, and shall be executed by the registered proprietors of the charge, and of the land, and of every charge of equal or inferior priority prejudicially affected by the alteration.

Discharge of
charges.

112. A discharge wholly or in part of a registered charge shall be made by an instrument in Form 43 in the First Schedule hereto, and shall be signed by the registered proprietor of the charge. But the registrar shall be at liberty to accept, and act upon, any other proof of satisfaction of a charge which he may deem sufficient.

See L. T. A., 1875, s. 28, last paragraph; also notes to Form 43.

Discharge of
mortgages of
building,

113. When all moneys intended to be secured by any mortgage or charge to or in favour of any building society,

friendly society (including a branch society), or industrial and provident society have been fully paid or satisfied, an instrument of discharge in the form provided by these Rules, under the seal of such society if incorporated, or under the hands and seals of the trustees for the time being of or acting in that matter for such building or friendly society, or other the proper officers thereof, if such society is not incorporated, and attested by the secretary; or under the hands and seals of two members of the committee of an industrial and provident society, if unincorporated, and attested by the secretary; shall have the same effect and operation in vacating the mortgage or charge, and in vesting the estate, and otherwise, as a receipt indorsed on such mortgage or charge, duly made, signed, and attested in such form and manner and by such persons as is prescribed by, and otherwise in conformity with the provisions of section 5 of 6 and 7 Will. IV., cap. 32; section 42 of the Building Societies Act, 1874; section 43 of the Industrial and Provident Societies Act, 1893; and section 53 of the Friendly Societies Act, 1896, respectively.

RR. 113—
115.

CHARGES.

friendly,
industrial or
provident
societies.

As to mortgages to building societies, *see* L. T. A., 1897, s. 9 (3); and r. 163; also, as to statutory forms of mortgages to public bodies and societies, *see* r. 152.

114. A transfer of a charge shall be made by an instrument in Form 44 in the First Schedule hereto.

Transfers of
charges.

See L. T. A., 1875, s. 23, and note as to arrears of interest.

115. Where a charge, whether affecting the whole or a part of the land comprised in a title, reserves the right to consolidate, it shall not on that account only be registered against any other land than that expressly described in it.

Reservation
of right to
consolidate
not to entitle
charge to be
registered
against land
not expressly
comprised
therein.

See L. T. A., 1897, s. 9 (4) (ii).

As to the statutory restriction on consolidation, *see* C. A., 1881, s. 17, which, as regards mortgages made after 1881, renders it necessary to expressly reserve the right if required.

Though the Rule by implication recognizes that a registered chargee may reserve the right to consolidate (r. 107), yet he cannot,

Effect of
Rule.

RR. 115—
117.

CHARGES.
—

it seems, insist, without the consent of the chargor, that the separate properties should be charged on the register with the total mortgage debt; but he may refuse to execute an instrument to discharge any of the charges, unless the whole debt is paid off on all the charges.

Land charges
may be
registered.

116. Every land charge shall be deemed to be created by the person registered as proprietor of the land at the date of the charge, and shall be capable of registration accordingly; but in the case of such a charge being registered, the covenants by the proprietor of the land under sections 23 and 24 of the Act of 1875 shall not be implied, and the proprietor of the charge shall not by virtue of such registration be entitled to any rights under sections 25, 26 or 27 of that Act to which he would not otherwise have been entitled.

For definition of "land charge," see r. 1 (3), *supra*, which follows the definition in L. C. R. and S. A., 1888, s. 4, with the addition of the words "whether upon the application of any person or not," which are apparently intended to meet the decision in *Reg. v. Land Registry*, 24 Q. B. D. 178.

An order for compensation under Agricultural Holdings (Eng.) Act, 1883, s. 31, is a land charge: Tenants' Compensation Act, 1890, s. 3.

A land charge, unless registered, would be overreached by a transfer for value: L. T. A., 1875, ss. 30—32. Where the charge is small, or likely to be soon discharged, a caution will be a sufficient protection.

Priority of
portions terms
to be pre-
served.

117. In order to prevent a security for moneys presently raisable under a puisne charge gaining priority by earlier registration over a security for moneys raisable at a future time under a paramount charge (as, for instance, when moneys are raised under a later portions term, while moneys raisable under an earlier portions term are still unraised) it shall be the duty of a registered proprietor charging settled land under section 6 (7) of the Act of 1897 to note on the instrument of charge the existence of any prior term or power under which moneys have to be raised which will, when raised, have priority over the moneys secured by the puisne charge, referring to the instrument creating the term or power and stating in the

note in general terms the amount raisable thereunder (for instance, "the sum of 5,000*l.*, and the costs of raising the same"). The note so made shall be entered in the register.

RR. 117—
120.
CHARGES.

See L. T. A., 1897, s. 6 (7), and note.

118. When a person registers a charge which he alleges to have, under or by virtue of some statute, priority over other charges upon the same land of earlier date, he shall (unless the charge contains such a statement) state in writing under what statute or statutes such priority is claimed; and an entry shall be made in the register that a claim is made by the registered proprietor of the charge that it has priority under the statute or statutes referred to, and that it does not (as between itself and other registered charges of earlier date) rank according to the date of its creation, or to the order of entry in the register.

Charges
having
priority by
statute.

Charges having priority by statute: *e.g.*, land improvement rent-charges under the Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), or under Limited Owners' Residences or Reservoirs, &c. Acts (33 & 34 Vict. c. 56; 34 & 35 Vict. c. 84; 40 & 41 Vict. c. 31).

119. If and when it becomes important to determine whether such claim to priority is well founded, any person interested may apply to the registrar to determine the question in accordance with these Rules: and the registrar may either himself determine all questions as to the priorities and relative rights of the parties; or may require the matter to be brought before the Court for decision: and the result of the decision shall be entered in the register, and any necessary alterations shall be made therein.

How claim
to priority to
be deter-
mined.

"Such claim:" *see* last Rule.

"In accordance with these Rules:" *see* rr. 232—247.

120. The provisions of r. 101, with respect to registered land, shall apply, with the necessary modifications, to a registered charge.

Power to
correct
register as to
charges in
accordance
with para-
mount title.

RR. 121—
123.
INCUMBRANCES
PRIOR TO
REGISTRATION.

Adaptation to Incumbrances prior to Registration and to Sub-mortgages of the provisions of the Act of 1875 with regard to Charges.

Registration
of incum-
brances
created prior
to first
registration.

121. Where it appears that any person is entitled to an incumbrance created prior to the first registration of land, the registrar shall, on the application, or with the consent, of the person so entitled, and on due proof of his title, and after notice to the registered proprietor of the land, register such person as the proprietor of such incumbrance; but, where there are more of such incumbrances than one, their relative priorities shall not be affected by the registration of some of them only, or by the order in which such of them as are registered are entered in the register.

See L. T. A., 1875, ss. 7, 8, 19, and notes thereto.

The last paragraph of the Rule negatives the priority conferred by L. T. A., 1875, s. 28, as regards these incumbrances.

As to discharge of non-registered incumbrances entered on first registration, see rr. 179, 180.

Priority of
transfer of
registered
incumbrances
created prior
to first
registration.

122. From and after the registration of the proprietor of an incumbrance, all transfers and other dispositions thereof shall be entered in the register, and shall (subject to any entry to the contrary in the register) rank, as between themselves, for purposes of priority in the order in which they are registered; and the incumbrance shall cease to be subject to the jurisdiction of any local deed registry.

See last Rule as to priority of incumbrances *inter se*.

As to determination of jurisdiction of deeds registries, see also r. 24, and note.

Dispositions
of incum-
brances
created prior
to first
registration
after registra-
tion thereof.

123. The same forms shall be used and proceedings adopted as to transfers and other dispositions of incumbrances so registered as are required in the case of registered charges.

See rr. 106—120, *supra*.

124. The registered proprietor of a charge or incumbrance may at any time charge the same with the payment of money in the same manner as the registered proprietor of land can charge the land.

RR. 124—
126.

SUB-
MORTGAGES.

Power to
create sub-
charges.

This Rule supplements L. T. A., 1875, s. 22.

As to sub-mortgages by deposit, *see* r. 126, *infra*, and L. T. A., 1897, s. 8, last paragraph.

125. Such a charge shall be called a sub-charge, and shall be completed, transferred, and discharged in the same form and manner, and, subject to any entry in the register to the contrary, shall, as against the person creating the sub-charge, imply the same covenants, and confer the same powers as a charge; and, subject to any entry to the contrary in the register, registered sub-charges on the same charge or incumbrance shall, as between themselves, rank according to the order in which they are entered in the register, and not according to the order in which they are created.

Dealings with
sub-charges.

Compare L. T. A., 1875, ss. 23—28.

The effect of this Rule and r. 123, *supra*, is that where the term "charge" is used in the Acts or Rules it must be read as including registered incumbrances and registered sub-charges: *see* also next Rule.

"Charge" includes "sub-charge" and "registered incumbrance."

126. Certificates of incumbrance and of subcharge shall be prepared in like forms, and be issued, and dealt with, and may be used to create a lien by deposit in the same manner, and shall be required to be produced on the same occasions, and their production may be dispensed with on the same terms as in the Acts and Rules provided with regard to certificates of charge.

Certificates of incumbrance and sub-charge.

See L. T. A., 1875, ss. 22, 40; L. T. A., 1897, s. 8, and rr. 19, 39, 55, 207, as to issue of certificates; as to certificates generally, *see* rr. 204—208, *infra*.

This Rule, as regards mortgages by deposit, supplements L. T. A., 1897, s. 8, last paragraph.

RR. 127—
129.

Transfer and Discharge.

**TRANSFER AND
DISCHARGE.**

Transfer by
registered
proprietor of
land and
chargee.

127. A transfer of land, combined with a discharge of a charge or incumbrance, shall be made by an instrument in Form 45 in the First Schedule hereto.

As to discharges of non-registered incumbrances, *see* rr. 179, 180.

Any consent may be given by the instrument of transfer: r. 155.

For suggested modification of form of transfer, *see* note to r. 79, *supra*.

Transmissions of Land and Charges.

i. *On death.*

Registration
of personal
representa-
tives of
deceased
proprietor.

128. On production of the probate or letters of administration of a sole (or sole surviving) registered proprietor of land, or of a charge, dying after 1897, the personal representative named in such probate or letters shall be registered as proprietor in the place of the deceased proprietor, with the addition of the words, "Executor (or Administrator) of deceased," and if an executrix or administratrix is a married woman, that fact shall be stated.

See note on L. T. A., 1875, s. 41, as to transmissions on death; also L. T. A., 1897, s. 1, and C. A., 1881, s. 30.

"The personal representative named in such probate . . .," *i.e.*, the proving executor: *see* next Rule, and note to L. T. A., 1897, s. 2.

No notice as to death duties will be entered: r. 172, *infra*.

As to married woman executrix, *see* notes to L. T. A., 1875, s. 44.

As to registration of official receiver on death of proprietor whose estate is ordered to be administered in bankruptcy, *see* r. 138: and as to registration on death of official receiver or trustee in bankruptcy, *see* r. 137.

Registration
of executor
after one
executor is
already
registered.

129. When, after one executor has been registered as proprietor under the preceding Rule, another executor applies to be registered as proprietor jointly with him, the registrar shall, after notice to the other executors, make the necessary alteration in the register upon production by the executor applying, of the probate obtained by him; or if he has not proved the will, of a statement

in writing, signed by him, that he has accepted the executorship and desires to be registered accordingly.

RR. 129—
131.

TRANSMIS-
SIONS ON
DEATH.

This Rule seems to show that where the proving executors alone are registered, they can make a title without the concurrence of the other executors named in the will, but *query* as to unregistered land: *see* note to L. T. A., 1897, s. 2 (2).

Such of the executors as are for the time being registered can make a title.

130. On production of the probate or letters of administration with the will annexed and of an instrument of assent or appropriation in either of the Forms 46 or 47 in the First Schedule hereto, or of a transfer by the personal representative and of the probate or letters of administration, the devisee or legatee named in the assent or appropriation, or the transferee named in the transfer, shall be registered as proprietor of the land or charge in place of the deceased proprietor.

Registration of devisees, legatees, heirs or purchasers, from personal representatives.

See L. T. A., 1897, ss. 3 (4), 4 (3).

It is conceived that, whether or not all the executors must execute the assent or appropriation, a transfer by the registered executors only will enable the transferee to be registered: *see* note to last Rule.

131. When a settlement is created by the will of, or otherwise arises in consequence of the death of, a sole registered proprietor, the personal representative shall, at the proper time, with the consent of the tenant for life (if of full age) deliver at the registry, together with the probate or letters of administration, a written application for the registration of a proprietor, with the proper restrictions and inhibitions, according to the principles stated in section 6 of the Act of 1897 and Rule 70 of the Rules; and thereupon the registration shall be made accordingly; and, if the parties desire it, the probate, or settlement, or a copy or abstract thereof, may be deposited in the registry for safe custody and future reference.

Registration of land becoming settled on death of proprietor.

See L. T. A., 1897, s. 6 (5); also, as to settled land, rr. 68—72, 81, 82, *supra*.

Or otherwise arises in consequence of the death of," *e.g.*, in the case of an infant heir (S. L. A., 1882, s. 59); or on the succession

"Or otherwise arises in consequence of the death of."

RR. 131—
133.

TRANSMIS-
SIONS ON
DEATH.

“At the
proper time.”

of a tenant by the curtesy: S. L. A., 1882, s. 58 (viii); *Bates v. Kesterton*, 1896, 1 Ch. 159, 164.

“At the proper time,” *i.e.*, at the expiration of a year, or when the estate has been sufficiently administered to ascertain that the land will not be required for payment of debts: L. T. A., 1897, s. 3. As to the proper time when an infant is entitled, *see* note to r. 71.

In the case of a lunatic tenant for life, the name of the lunatic will be entered on the register, and the committee of his estate will sign the consent in his name for him: S. L. A., 1882, s. 62; and *see* L. T. A., 1875, s. 88.

As to a married woman tenant for life, *see* S. L. A., 1882, s. 61; the separate examination (L. T. A., 1875, s. 87) will not be required by reason of the tenant for life being subject to a restraint on anticipation: S. L. A., 1882, s. 61 (6).

A copy only of the settlement should be deposited: *cf.* r. 162.

Registration
of remainder-
man on death
of tenant for
life.

132. When the trustees of a settlement apply, on the death of a tenant for life, for the registration of a successor under the settlement, they and their solicitor shall make a statutory declaration to the effect that the deceased proprietor was tenant for life, and that they are the trustees of the settlement, and that the person for whose registration they are applying is the successor under the settlement, and that the restrictions and inhibitions applied for are those proper to be entered, or that no restrictions or inhibitions are required.

See L. T. A., 1897, s. 6 (4), and rr. 133—135, *infra*.

As to restrictions, *see* rr. 70, 71, *supra*.

Restrictions
and inhibi-
tions.

No restrictions or inhibitions will be required where, *e.g.*, the successor is entitled in fee simple and the family charges, or charges on his estate, have either been discharged or entered in the charges register.

Where the successor is entitled to an estate in tail (*e.g.*, left unbarred, subject to a general power of appointment, so as to enable him to overreach family charges), the same restrictions should be entered as if he were tenant for life: S. L. A., 1882, s. 58 (i).

Power for
registrar to
require
certificate of
counsel as to
title of re-
mainderman.

133. In any case in which the registrar may deem it desirable that the declaration shall be accompanied by a certificate of counsel to the like effect, a certificate to his satisfaction shall be produced.

“The like effect,” *i.e.*, as the declaration: *see* r. 132.

134. When such a declaration (and certificate if required) are produced, the registrar shall not require production of the settlement or any further evidence; but when they are not produced he shall enquire into the terms of the settlement and shall satisfy himself that the proper entries are made on the register.

RR. 134—
136.

TRANSMIS-
SIONS ON
DEATH.

Evidence of
title of re-
mainderman.

See L. T. A., 1897, s. 6 (4).

Compare r. 72, which provides for a copy or extract (r. 162) of the settlement being filed at the registry; and see L. T. A., 1897, s. 6 (6).

"Further evidence," *e.g.*, evidence of pedigree.

135. If, on the death of a tenant for life, registered as proprietor of land, the trustees of the settlement neglect to apply for the registration of the new proprietor in his place, or if there are no such trustees, any person interested under the settlement may apply for the registration of a new proprietor. The registrar shall thereupon enquire into the terms of the settlement, and shall settle draft entries for the register on the principles stated in section 6 of the Act of 1897 and Rule 70 of these Rules in regard to settled land, and shall give notice thereof to the trustees of the settlement (if any) and to the succeeding tenant for life, and to such other persons (if any) as he may think fit, and, if no valid objection is made thereto, shall enter the new proprietor accordingly.

Procedure on
death of
tenant for life
where trustees
do not apply
for registra-
tion of re-
mainderman.

See L. T. A., 1897, s. 6 (4); the registrar is bound to inquire into the title, if the trustees do not apply.

It seems a mistake to have thrown the duty on the S. L. A. trustees; the successor, in accordance with the principle of the S. L. As., ought to have been the person to apply, and the trustees ought to have been served with the application.

136. On the death of one of several joint proprietors of land the name of the deceased proprietor shall be withdrawn from the register on production of a certificate of death, or probate or letters of administration, with evidence of identity, by statutory declaration; or such other evidence as the registrar may deem sufficient in each case.

Death of one
of several
joint pro-
prietors.

See, also, as to joint proprietors, rr. 185—187.

RR. 137—
140.

TRANSMIS-
SIONS ON
DEATH.

Death of
official
receiver or
trustee in
bankruptcy.
Bankruptcy.
Registration
of official
receiver.

137. On the death of a proprietor registered under Rule 141 as official receiver or trustee in bankruptcy, the personal representatives shall not be registered, but proceedings shall be taken in accordance with Rule 143.

See, also, rr. 128, 138.

ii. *On Bankruptcy or Liquidation.*

138. On production to the registrar of an office copy of an order of a Court having jurisdiction in bankruptcy adjudging a proprietor bankrupt, or directing the estate of a deceased proprietor to be administered under section 125 of the Bankruptcy Act, 1883, together with a certificate signed by the official receiver that any registered land or charge is part of the property of the bankrupt, or deceased proprietor, divisible amongst his creditors, the official receiver may be registered as proprietor in the place of the bankrupt or deceased proprietor.

See L. T. A., 1875, s. 43, as amended; also Bankruptcy Act, 1883, ss. 132, 134.

Orders under
Bankruptcy
Act, 1883,
s. 125.

No order will be made under Bankruptcy Act, 1883, s. 125, if an application for an order for administration has been made, but the property will vest in the personal representatives until such an order is made, and they can make a title under an order for sale, till the official receiver is registered. A purchaser of registered land will not, it seems, be concerned with the order for sale, unless it is protected on the register.

Registration
of trustee in
bankruptcy
in place of
official
receiver.

139. When the official receiver has been registered as proprietor and some other person is subsequently appointed trustee, such person may be registered as proprietor in the place of the official receiver, on production of an office copy of the certificate by the Board of Trade of his appointment as trustee.

See, also, r. 101, *supra*; Bankruptcy Act, 1883, ss. 20 (1), 44, 138, 140; *Re Parker*, 15 Q. B. D. 196.

Registration
of trustee in
bankruptcy
where official
receiver has
not been
registered.

140. If the official receiver has not been registered as proprietor, the trustee may be registered as proprietor on production of office copies of the order adjudging the

proprietor bankrupt, and of the certificate of the appointment of the trustee, with a certificate signed by the trustee that the land or charge is part of the property of the bankrupt, divisible amongst his creditors.

RR. 140—
143.

TRANSMIS-
SIONS ON
BANKRUPTCY.

The certificate of appointment is given by the Board of Trade :
Bankruptcy Act, 1883, ss. 138, 140.

141. Where the official receiver or trustee in bankruptcy is registered as proprietor, the words "official receiver," or "trustee of the property of A. B., a bankrupt," shall be added to the register.

Description
of official
receiver or
trustee in
bankruptcy.

As to proceedings on death of official receiver, or trustee in bankruptcy, *see* rr. 137, 143.

142. If any registered land or charge is vested in the trustee under the provisions of a scheme of arrangement approved by a Court having jurisdiction in bankruptcy, the official receiver or other trustee may be registered as proprietor in like manner as a trustee in bankruptcy, upon production of an office copy of the scheme of arrangement, a certificate signed by the official receiver or such other trustee, that the registered land or charge was part of the property vested in him under the provisions of the scheme; and, in the case of a trustee, other than the official receiver, an office copy of the certificate by the Board of Trade of his appointment as trustee.

Registration
pursuant to a
scheme of
arrangement
under the
Court.

See Bankruptcy Act, 1883, s. 23; Bankruptcy Act, 1890, ss. 3, 6.

143. When a trustee in bankruptcy, or under the provisions of such scheme of arrangement, who has been registered as proprietor, vacates his office as trustee by reason of a receiving order having been made against him, or by release, resignation, death, removal from office, or any other cause, the official receiver may be registered as proprietor; or if some other person be appointed trustee, such person may be registered as proprietor on production of an office copy of the certificate of his appointment as trustee.

Registration
on vacation of
office of
trustee in
bankruptcy.

See, also, r. 137, *supra*.

RR. 144—
146.

TRANSMIS-
SIONS ON
BANKRUPTCY.

Entry of
notice of
cesser of
interest of
official
receiver or
trustee to
operate as a
release to
them.

144. Where the official receiver or a trustee has been registered as proprietor, and, by reason of any act or omission or order, his estate and interest in the property has become divested, he may give notice to the registrar in Form 48 in the First Schedule hereto, which notice shall be entered on the register, together with a general inhibition against dealings until further order. On such entry being made the official receiver or trustee shall be exonerated from all such liability (if any) as may affect him in respect of the property by reason of his name being entered on the register as proprietor thereof. When such a notice has been entered on the register an entry may be made under Rule 101 without notice to the registered proprietor, or inquiry as to his execution of a transfer.

Power to
register
person en-
titled, *e.g.*,
on discharge
of bankrupt.

As to inhibitions, *see* rr. 194, 195, and Form 9.

Rule 101 enables the registrar to give effect to a paramount title; thus if the bankrupt has obtained his discharge, his name will be replaced on the register; in this case the inhibition, which is only directed against dealings by the official receiver or trustee, would be removed.

Resolution or
order appoint-
ing a liqui-
dator to be
filed.

145. In the liquidation of a company any resolution or order appointing a liquidator may be filed and referred to on the register, and, when so registered, shall be deemed to be in force until it is cancelled or superseded on the register.

See r. 16, *supra*.

Transfers by
company in
liquidation.

The name of the company will remain on the register, but the liquidator will affix the seal and should join in all instruments of transfer: *see* r. 155.

As to entries by reference to filed documents, *see* r. 40.

It is conceived that where the order or resolution affects other property besides registered land, the order or resolution should be filed with the registrar of joint stock companies at Somerset House, and a copy or duplicate should be filed at the registry.

As to registered dispositions generally.

i. *Form.*

Prescribed
forms to be
used where

146. The forms in the First Schedule hereto shall be used in all matters to which they refer, or are capable of

being applied or adapted, with such alterations and additions only as are necessary to meet the circumstances of each case; but no recital or provision not authorized by these Rules or the notes to the forms shall be inserted.

It is conceived that this Rule does not prevent the addition to the form (Nos. 14—32) of transfer of a receipt clause, or the words "in fee simple:" *see*, also, note to L. T. A., 1897, s. 16.

For altered forms of transfer, *see* notes to rr. 79, 81.

It may be questioned whether the form of charge (No. 39) may be varied so as to pass the estate in the fee simple off the register, or so as, for instance, to incorporate the statutory form of mortgage contained in the Third Schedule to C. A., 1881: *see* notes to rr. 106, 152; and L. T. A., 1875, s. 22; but *see* r. 276.

As to provisions "authorized by these Rules," *see* rr. 83, 86, 89, 91, 107, 112; for notes to Forms, *see* particularly Forms Nos. 2, 5, 11, 12, 14, 36—40, 43—47.

The word "provision" must, it seems, be confined to matters of the same nature as recitals, else the first part of the Rule can have no effect: *see*, however, next Rule.

147. Instruments for which no form is provided or to which the scheduled forms cannot conveniently be adapted, shall be in such form as the registrar shall direct, the scheduled forms being followed as nearly as circumstances will permit. There may be added to the form, as a separate part thereof, or in a Schedule thereto, any special stipulations varying or adding to the provisions thereof that the parties may wish to enter into; but the registrar is not to allow any such stipulation to be entered or noted in the register, unless application is made to him in writing to do so, and he considers that such entry or note can properly be inserted.

The power to schedule stipulations to forms may be convenient, and it seems that in the case of charges (*see* r. 107, *supra*), the registrar has power to veto even stipulations which are not to be entered on the register.

Where a stipulation is not entered on the register it would seem to have the same effect as if it had been contained in a deed executed off the register under L. T. A., 1875, s. 49, except that the instrument will be filed: r. 252, *infra*. But a note in the register, referring to the filed stipulations, would, it is conceived, have the same effect as registration.

RR. 146, 147.

FORMS OF REGISTERED DISPOSITIONS.

applicable without any unauthorized additions.

Whether receipt clause, or "in fee simple" may be added to forms of transfer.

As to whether form of charge may be made to pass the fee simple.

Authorized provisions.

"No recital or provision."

Transactions for which no forms are prescribed.

Power to schedule stipulations.

Effect of stipulations not entered on register.

RR. 148—
150.
—
FORMS OF
REGISTERED
DISPOSITIONS.
—

Covenants for
title.

148. For the purpose of introducing the implied covenants under the Conveyancing and Law of Property Act, 1881, a person may, in a registered disposition, be expressed to execute, transfer, or charge as beneficial owner, as settlor, as trustee, as mortgagee, as personal representative of a deceased person, as committee of a lunatic so found by inquisition, or under an order of the Court: and an instrument of transfer or charge, and any instrument affecting registered land, or a registered charge, may be worded accordingly, but no reference to such implied covenants shall be entered in the register.

Effect of
covenants for
title.

As to the manner in which covenants for title in relation to registered land will be construed apart from special stipulation, *see* L. T. A., 1897, s. 16 (3). For special stipulation, *see* proviso in suggested forms of transfer in notes to rr. 79, 81.

Power for
registrar to
refuse to
register
improper
instruments
or entries.

149. If it appears to the registrar that any instrument or entry proposed to be entered or made in the register is improper in form or in substance, or is not clearly expressed, or does not indicate with sufficient precision the particular interest or land which it is intended to affect, or refers only to matters which are not the subject of registration under the Acts, or, being a condition, does not run with the land, or is not capable of being legally annexed thereto, or of affecting assigns by way of notice, or, being a restriction, is unreasonable, or calculated to cause inconvenience, or is otherwise expressed in a manner inconsistent with the principles upon which the register is to be kept, he may decline to enter the same in the register, either absolutely, or without such modifications therein as he shall approve; or he may himself with the applicant's consent, settle the form of the entry to be made.

As to restrictive covenants, *see* r. 184, *infra*, and note thereto.

"Matters which are not the subject of registration under the Acts," *e.g.*, matters excluded from the effect of registration under a possessory or qualified title, or trusts and equities which should be protected by caution, inhibition or restriction.

Description
of part of
land included
in a title.

150. An instrument dealing with part of the land comprised in a title may, where such part is clearly defined on

the filed plan of the land, define it by reference to that plan instead of by means of an accompanying plan.

See r. 80, *supra*.

151. Lands included in more than one title may be included in one disposition.

See note to L. T. A., 1875, s. 22.

152. Where, under or by virtue of any statute, or other sufficient authority, a public body, corporation, company, or society is empowered or required to take conveyances or mortgages or to execute deeds and instruments in any particular form or style, all transfers and other instruments requiring registration may be adapted to such form and style, and for that purpose the scheduled forms may be modified in such manner as the registrar may from time to time direct or approve, and entered on the register accordingly.

See also rr. 101, 113, *supra*.

This Rule, perhaps, tends to show that a modification of the prescribed form of charge, so as to correspond with a statutory mortgage (C. A., 1881, Third Schedule), would not be permitted: see note to r. 146.

153. An instrument executed under the 6th sub-section of the 9th section of the Act of 1897 by a person entitled to be registered as proprietor of land, or of a charge, before he has been registered as such, shall be in the same form as is required for a disposition by the registered proprietor. But no registration of such instrument shall be made until the person executing the same has been registered as proprietor, or his right to be so registered has been shown to the satisfaction of the registrar.

See also next Rule and r. 101.

As to proving the right of an executor or administrator to be registered, see rr. 128, 129.

As to the registration of the successor on the death of a tenant for life, see rr. 132—135. As to the death of a joint proprietor, see r. 136. As to the death of a trustee in bankruptcy, see rr. 137, 141.

C.

RR. 150—153.

FORMS OF REGISTERED DISPOSITIONS.

Power to include in one disposition lands included in more than one title.

Modification of prescribed forms in accordance with any statutory requirements in favour of public bodies, &c.

Transfer or charge by person entitled to be registered before registration.

Personal representatives. Successor under a settlement. Survivor of joint proprietor.

RR. 153—
156.

**FORMS OF
REGISTERED
DISPOSITIONS.**

Trustee in
bankruptcy.

Persons
claiming
under un-
registered
transfer or
charge.

Transfer or
charge of
part of land
by person
entitled to be
registered.

Power to give
consent to a
disposition by
execution of
the instru-
ment of
disposition.

*Query, Rule
does not
apply to
inhibitions.*

As to the registration of the official receiver or trustee in bankruptcy, *see* rr. 138—143.

See also as to registered dispositions by purchasers before first registration in a compulsory district, r. 78, *supra*.

Section 9 (6) of the L. T. A., 1897, applies to all persons entitled to be registered on the death or bankruptcy of a proprietor, or under an instrument of transfer or charge. To create a mortgage by deposit under s. 8, the proprietor must, however, be registered.

154. Where such an instrument as is mentioned in the last preceding Rule deals with a portion of the land comprised in a title, or with a charge not yet entered in the register, the form may be varied so far as may be necessary to identify the land or charge dealt with.

155. Where a disposition of land is about to be made which cannot be registered without the consent of some other person being obtained, such consent may be given by the instrument of disposition, which must in that case be executed by the person giving the consent; and for that purpose the forms may be varied to meet the circumstances of the case.

Under this Rule, for instance, a doweress (r. 170) may release her dower, or an incumbrancer (Form 45) his charge, or a cautioner his right or equity. And S. L. A. trustees may join on a sale by a tenant for life to acknowledge receipt of the purchase money, in accordance with the terms of the restriction.

Where an inhibition is in force (L. T. A., 1875, s. 57), it seems that it must be cancelled under an order or otherwise (r. 16), and that it will not be sufficient for the inhibitor to join in the disposition.

ii. *Execution and Attestation.*

Instruments
of disposition
to be executed
as deeds.

156. Every instrument of transfer, charge, exchange, or partition of registered land, or of any registered charge on land, including any alteration of a charge, shall, and, if the parties desire it, any other instrument required to be in writing may, be executed as a deed.

The result of this Rule as regards charges is that every registered charge (with rare exceptions (*see* r. 116)) will, unless there is an

entry to the contrary, have a power of sale: C. A., 1881, s. 19; RR. 156—
L. T. A., 1897, s. 9 (2); L. T. A., 1875, s. 27. 160.

As to unqualified persons drafting instruments for purposes of registration, see L. T. A., 1897, s. 10. EXECUTION OF REGISTERED DISPOSITIONS.

157. Every instrument required to be executed as a deed shall be attested. Deeds to be attested.

See, also, next Rule.

There is no Rule which requires the transferee to execute, but the notes to some of the Forms require both parties to execute, or to sign the plan.

158. Every instrument required by these Rules to be attested shall be executed in the presence of a witness, who shall write his name, address, and description in the attestation clause. Witness to write name, address, and description.

159. If any instrument is executed by attorney, the power of attorney, or an office copy thereof, and, in cases not falling within the Conveyancing Act, 1882, evidence (by the statutory declaration of the attorney or otherwise) sufficient to satisfy the registrar that the principal was alive at the time of the execution of the instrument and that the power was then unrevoked, shall be produced to the registrar; and the original power of attorney shall be filed, either at the central office or in the registry. Powers of attorney.

The "cases not falling within" C. A., 1882, ss. 8, 9, can, it seems, only be where the power of attorney is not for value, not expressed to be wholly irrevocable, and is not exercised within the period during which the voluntary power is irrevocable. Cases not within C. A., 1882, ss. 8 and 9.

As to filing at the central office, see C. A., 1881, s. 48. The power should not be filed at the registry if it relates to any property besides registered land. Deposit of original instruments creating powers of attorney.

iii. Registration.

160. When instruments capable of registration are delivered (by post or otherwise) at the registry with the proper Inland Revenue and Land Registry fee stamps affixed thereto or impressed thereon, accompanied by the land certificate, office copy registered lease, or certificate of Instruments to be registered in the order in which they are delivered.

RR. 160, 161.

REGISTRA-
TION OF
DISPOSITIONS.

charge, as the case may be (if such document is not already deposited in the registry) they shall be entered in the register in the order in which they are delivered, which order shall, in the absence of direction to the contrary in the instruments themselves, be their order of priority in the register. All instruments delivered by post during the hours in which the office is open for registration shall be treated as delivered at the closing of the office on that day, and shall, if there is more than one relating to the same property or the same charge, rank together for purposes of priority; and if delivered between the hours of closing and opening of the office for registration, shall be treated as delivered at the opening of the office, and shall rank together for purposes of priority.

See, also, next Rule.

Certificates of
leaseholds.

"Office copy registered leases" will soon become superseded by certificates: r. 55, *supra*.

As to land registry fee stamps, *see* Fee Order, 1898, Chap. V., *infra*.

Priorities.

As to depositing certificates at the registry, *see* L. T. A., 1897, s. 8.

For an instance of a direction to the contrary as regards priority, *see* r. 117, *supra*.

Registration with a possessory title ranks according to date of application: r. 19.

Holidays.

As to when the office is not open, *see* rr. 277, 278.

For cases where registration dates back, *see* rr. 19, 165.

Notice that
an instrument
has been
delivered for
registration
to be sent to
registered
proprietor.

161. When an instrument purporting to be already executed by a registered proprietor is delivered at the registry for registration, notice of the fact shall be sent to him at his registered address; and unless the execution is admitted by him, the registration shall not be completed until after the expiration of three clear days from the posting of the notice.

See r. 256, *infra*.

Indemnity
forfeited for
contributory
negligence.

The notice and consequent delay in completion will be a protection against fraud, and thus prevent any heavy strain being put on the insurance fund: L. T. A., 1897, s. 7 (3). As to registered addresses, *see* r. 260.

Completion.

As to the effect of the delay upon completion of purchases, *see* note to L. T. A., 1897, s. 16. It may be doubted whether the

presence of the transferor at the registry would enable him to admit the execution, as the notice has to be sent in any case.

Instruments will be registered according to priority of delivery at the registry (r. 160), but as the registry fee stamps have to be affixed before (*ib.*), a vendor fraudulently disposed would find it difficult to carry out two registered transactions with the same land, with different persons, without their having notice of the other transaction before parting with their money. The custody of the certificate would render the holder safe, as the other transaction could not be completed without it (*ib.*); hence it seems desirable that the certificate should not be deposited at the registry before completion.

A registered disposition has no statutory effect till the name of the transferee or chargee is entered on the register: L. T. A., 1875, ss. 22, 29, 34; *see*, however, L. T. A., 1897, s. 9 (6); rr. 153, 154; also note to r. 101.

As to delay in giving effect to orders of Court, *see* r. 246, *infra*.

162. Except where otherwise provided by these Rules, all deeds, applications, and other documents on which any entry in the register is founded shall be retained, and shall not be taken away from the registry except under a written order of the registrar or an order of the Court.

"Except where otherwise provided": *cf.* rr. 20, 38, 72, 131, 159, 163, 168.

All instruments executed in the prescribed forms, with or without modification, will be retained at the registry; hence it is desirable, as a rule, not to include in the forms any matter which will require separate proof off the register.

163. Upon the registration of a charge in favour of a building society, friendly society (including a branch society), or industrial and provident society, the instrument of charge may (if it is so desired) be delivered to them after registration upon their delivering at the registry a copy thereof, verified by the signature of the secretary as being a correct copy; which copy shall be admissible for all purposes as sufficient evidence of the contents and execution thereof, without the production of the original charge. Such copy need not be stamped, and must be filed in the registry.

See also L. T. A., 1897, s. 9 (3), and rr. 113, 152, *supra*.

RR. 161—
163.

REGISTRA-
TION OF
DISPOSITIONS.

Meaning of
completion.

What instru-
ments to be
retained in
registry.

When
separate deeds
should be
used.

Provision as
to mortgages
by building,
friendly,
industrial and
provident
societies.

RR. 164, 165.

STAMP DUTY
ON
REGISTERED
DISPOSITIONS.

Instrument to
carry out
unregistered
disposition
already
effected to be
free from
stamp duty.

iv. *Stamp Duty.*

164. When an instrument of transfer or charge is executed for the sole purpose of carrying out on the register a transaction already effected by a deed or other instrument not on the register, the Inland Revenue stamp on the transaction shall be affixed to or impressed on the last mentioned deed or instrument, and the registered instrument shall bear no stamp duty. Provided that the stamped instrument shall before the completion of the registration be produced to an officer of the registry, to show that all duty payable in respect of the transaction has been paid.

It is conceived that "an instrument of transfer or charge" would include an instrument of exchange, partition, or sub-charge.

For example, *see* note to L. T. A., 1875, s. 22.

Power for
registrars to
act on solici-
tor's under-
taking to
stamp insuffi-
ciently
stamped
instrument.

165. When, upon the delivery of any instrument for registration, a question arises whether such instrument, or any other instrument produced under Rule 164, is sufficiently stamped, and the applicant for registration, or his solicitor, gives a written undertaking that he will within a time fixed by the registrar procure and furnish the necessary evidence that the instrument so delivered or produced either then was or has subsequently been sufficiently stamped, a note shall be made in the register that on that day registration was applied for, but that such question having arisen it was not completed: and the instrument shall be returned to the person who delivered or produced it. If such instrument is subsequently, within the time fixed, delivered or produced at the registry, with the proper evidence that it is when so delivered or produced sufficiently stamped, the registration shall be completed as of the date on which the note was made. If, at the expiration of the time fixed, the written undertaking has not been complied with, the note shall be withdrawn from the register.

Relation back
of registra-
tion.

For another case where registration dates back, *see* r. 19.

PART IV.

MINOR ENTRIES IN THE REGISTER.

Notices of Leases or Agreements.

RR. 166—
168.

NOTICES OF
LEASES.

166. Upon an application to register notice of a lease or agreement for a lease under the 50th and 51st sections of the Act of 1875 the lease or agreement, together with a copy thereof, and a copy or tracing of the plan (if any) thereon, and either the consent in writing of the registered proprietor of the freehold, or of the superior lease out of which the lease or agreement of which notice is to be registered is derived, or an order of the Court authorising the registration of the notice, shall be delivered at the registry.

Notice of
leases as in-
cumbrances.

As to notices being also required when a lease is registered, see r. 53, *supra*.

Notice of a lease by a chargee in possession made pursuant to C. A., 1881, s. 18, ought to have been made capable of being entered without either the consent of the proprietor of the reversion or an order of Court: see note to L. T. A., 1875, s. 25.

Leases by
chargee in
possession.

167. If the lease or agreement for a lease comprises only part of the land in the title, and does not contain sufficient particulars (by plan or otherwise) to enable such part to be clearly shown on the filed plan of the land, the applicant (with the concurrence of all other necessary parties, if any) shall furnish the necessary information.

Notice of
lease of part
of land com-
prised in a
title.

Compare r. 150, *supra*.

168. The notice in the register shall refer to the filed copy of the lease or agreement, and shall give the term, and may include such other short particulars as can be conveniently entered. Where the lease or agreement confers a right of pre-emption this shall be noted in the register. The lease or agreement shall be marked with a note of the entry and shall be returned to the applicant.

Notice on
register to
give parti-
culars of
lease.
Lease to be
returned to
lessee.

See, also, as to rights of re-entry, or reverter, amendment of last paragraph of L. T. A., 1875, s. 18.

Right of pre-
emption.

The notice will be entered in the Charges Register: r. 7.

RR. 169—
172.

NOTICES OF
LEASES.

Power to act
on copy lease
verified by
statutory
declaration.

Notice of
estates in
dower or by
the curtesy.

169. If the lease or agreement for a lease is not produced, a statutory declaration by the applicant or his solicitor, stating the reason of the non-production and verifying the copy, shall be furnished.

Notices of Estates in Dower or by the Curtesy.

170. Application under the 52nd section of the Act of 1875 to register notice of an estate in dower or by the curtesy in any registered land shall be in the Form 49 in the First Schedule hereto, and shall show concisely the existing rights of the several persons interested in the land affected by the application. The evidence in support of the application shall be delivered therewith, and the matter shall be proceeded with as the registrar shall direct. Notice of an estate in dower or by the curtesy shall be entered in the Charges Register as an incumbrance.

See L. T. A., 1875, s. 52, and note thereto; also r. 131; an estate by the curtesy should not be noted up under this Rule.

Tenant in
dower; power
to lease.

A tenant in dower in possession has power to lease the land subject to her right, except the principal mansion-house and land usually occupied therewith: S. E. A., 1877, s. 46; as to leases under that section, see *Davies v. Davies*, 38 Ch. D. 499.

Notices as to Death Duties.

Registrar to
enter notice
of liability to
death duties.

171. Where, upon any examination of title, the registrar finds that there is, or may arise, any such liability to death duties as is mentioned in section 13 of the Act of 1897, he shall enter notice thereof in the Charges Register according to Form 50 in the First Schedule hereto.

See L. T. A., 1897, s. 16, and note thereto; also L. T. A., 1875, s. 18, as amended.

No notice of
death duties
to be entered
where per-
sonal repre-
sentatives are
registered.

172. Where, on the death of a registered proprietor of land his personal representative is registered as such under Rule 128, notice of liability to duty shall not be entered.

This Rule seems to show that personal representatives may on sale over-reach any estate or succession duty: see note to L. T. A., 1897, s. 2 (2); at any rate, after grant of administration.

173. If the personal representative of a deceased proprietor of land assents to a devise or appropriation, or transfers land to any person otherwise than by sale, notice of the liability to duty shall be entered unless there is produced to the registrar either

- (a) Proof to the satisfaction of the registrar that all duty payable in respect of such land by reason of the death of the proprietor has been paid or satisfied; or
- (b) A certificate from the Commissioners of Inland Revenue in Form 51 in the First Schedule hereto, or to that effect; or
- (c) Proof to the satisfaction of the registrar that the applicant is entitled to the land in such a capacity that any liability to duty would not affect a purchaser from him if the land were unregistered.

RR. 173—
175.

NOTICES OF
DEATH DUTY.

Notice of liability to death duties to be entered on assent, appropriation, or voluntary transfer, by personal representatives unless duty already paid, or land can be sold free of duty.

See L. T. A., 1897, ss. 3, 4, 5, 13.

As to (c), where land is registered in the name of a tenant for life, succession duty can be over-reached (*Re Warner's S. E.*, 17 Ch. D. 711), as also where land is registered (L. T. A., 1875, s. 68) which is held on trust for sale; in both these cases, it is conceived that the registrar will not enter notice of the duty: see also r. 172, and note to L. T. A., 1897, s. 2 (2).

Cases where notice of duty will not be entered.

174. Where a notice of liability to duty has been entered on the register, it may be cancelled on production of any such evidence as is mentioned in the preceding Rule.

Cancellation of notice of death duties.

Exemption from Land Tax, Tithe Rent Charge, and Payments in Lieu of Tithes or of Tithe Rent Charge.

175. Application to notify exemption from land tax, tithe rent charge, and payments in lieu of tithes or of tithe rent charge, shall be made by delivering at the registry the certificate of redemption or other necessary evidence, with a request to notify the exemption in the register. If the registrar is satisfied by sufficient evidence that the claim to such exemption is well founded, he shall notify the fact in the property register.

Note as to exemption from land tax or tithe rent-charge to be entered on proper evidence.

See L. T. A., 1875, s. 18.

RR. 176—
178.

MINERALS
VESTED IN
PROPRIETOR.

Power to
enter note
that mines
and minerals
are included
in a title.

Mines and Minerals vested in the Proprietor of the Land.

176. Where any mines and minerals have been opened and worked by the proprietor of the land or by his predecessors in title, or by any other person claiming under him or them, and it does not appear on the examination of title or from any other source that the ownership of such mines and minerals is vested in any other person, or in any other case where it is proved to the satisfaction of the registrar that the right to any mines and minerals, whether opened and worked or not, is vested in the proprietor, the registrar may cause him to be registered as proprietor of such mines and minerals by adding to the property register a note to the effect that such mines and minerals are included in the registration, and the mines and minerals shall thenceforth be considered as forming part of and subject to the registered title of the land unless otherwise noted in the register.

See note to L. T. A., 1875, s. 18.

As to transfers of mines and minerals, and mining rights, *see* rr. 1 (4), 87—89.

Severance of Mines and Minerals from the Land.

Power to
enter note
that mines
and minerals
are excluded
from a title.

177. When it appears from the documents or abstract of title furnished, or from the admission of the proprietor of the land, or from any other source, that all or any of the mines and minerals are severed from the land, the registrar shall enter a note in the property register that such mines and minerals are excepted from the registration.

See note to last Rule, and to L. T. A., 1875, s. 49.

Notice of the existence of other Liabilities, Rights, and Interests, mentioned in the 18th Section of the Act of 1875, as amended by the Act of 1897.

Power to
enter notice
of liabilities
which are not
incumbrances
in the charges
register.

178. When any person desires to have an entry made in the register against any land of notice of the existence of a quit rent, or any other liability, right, or interest

mentioned in section 18 of the Act of 1875, as amended by the Act of 1897 (except in respect of death duties and mines and minerals), the application shall be made in writing, and shall state the particulars of the entry required to be made, and shall be supported by evidence satisfactory to the registrar. The proprietor of the land shall have notice of the application, and the matter shall be proceeded with as the registrar shall direct, and any entry, if made, shall be against the title in the charges register.

RR. 178, 179.

NOTICE OF
OTHER
LIABILITIES.

See also r. 37, *supra*.

It seems that it will not be necessary for the land certificate to be produced (L. T. A., 1897, s. 8 (1)) when any of these liabilities are noted up, but whenever the certificate is noted up they will appear: Form 61.

Notice on
certificate.

Discharge of Incumbrances entered on First Registration.

179. When, upon the first registration of any land, notice of an incumbrance affecting the same has been entered in the register, the cessation of which is required to be notified under section 19 of the Act of 1875, the applicant for such notification shall, if there has been no dealing with or transmission of such incumbrance, produce either the incumbrance with a release or receipt thereon, signed by the incumbrancer, or a discharge in the form provided by these Rules. If there has been any dealing with or transmission of the incumbrance, the applicant shall deliver at the registry an abstract showing his title to make the application, and prove the same in the usual way, as in cases of examination of title on first registration. Upon production of such document or proof the registrar may notify in the register the cessation of the incumbrance, either by cancelling the original entry thereof, or noting the fact of its cessation.

Discharge of
incumbrances
entered on
first registra-
tion.

See r. 127 as to a combined transfer and discharge; and as to incumbrances being converted into registered charges, see rr. 121—123. Unless a mortgage is so converted, it is conceived that Form 43 (see r. 112) cannot properly be used in the place of a re-conveyance: see also note to L. T. A., 1875, s. 7, and next Rule.

When re-
conveyance is
necessary.

.RR. 179—
183.

Incumbrances may be noted up on registration with a possessory title, but it is not essential : r. 18, *supra*.

**DISCHARGE OF
INCUMBRANCES
ENTERED ON
FIRST REGIS-
TRATION.**

Discharge of incumbrance created prior to first registration which has been subsequently registered.

180. When any person has been registered as the proprietor of such an incumbrance as is mentioned in the last preceding rule, the cessation thereof may be notified in the register upon the production of a discharge executed by the registered proprietor thereof.

As to the registration of incumbrances existing at the time of first registration, *see* rr. 121—123, 126.

The discharge, where the incumbrance has not been registered, ought to be effected by a re-conveyance or release in common form; the prescribed form (Form 43) would at most enable the registrar (*see* last Rule) to cancel the note, and would leave the legal estate outstanding off the register till a transfer for value (L. T. A., 1875, s. 30) extinguished it.

Determination of a Lease.

Power to cancel notice of leases on their determination.

181. When a lease, which is noted in the register as an incumbrance, expires by effluxion of time, or (when the term granted is for, or is determinable on, a life or lives) by the falling in of the last life, any party interested may apply to have its determination noted in the register. Upon the production of such evidence as shall satisfy the registrar that the lease has determined, the registrar may notify in the register the determination thereof, either by cancelling the original entry of notice of the lease, or entering the fact of its determination.

As to other cases, *see* r. 183, *infra*.

Notice of application to cancel notice of a lease to be given to the registered proprietor (if any) of the lease.

182. Where the leasehold title has also been registered, notice of the application for such notification shall be given to the registered proprietor of the lease, unless he consents in writing to or concurs in the application. When the notification has been completed the leasehold title shall be closed.

See also L. T. A., 1875, s. 20.

Cancellation of notice of lease expired

183. Where such a lease expires by any other means, such as merger, surrender, re-entry, or enlargement into a

fee simple under the Conveyancing Acts, the registrar shall, before cancellation of the notice of the lease, make such inquiry as he may deem necessary into the beneficial interests in the freehold and leasehold titles.

RR. 183—
186.

DETERMINA-
TION OF A
LEASE.

As to enlargement into fee simple, *see* C. A., 1881, s. 65; C. A., 1882, s. 11.

by merger,
re-entry or
enlargement.

It is conceived that this Rule is intended to apply, whether the leasehold title is registered or not; but *see* last Rule.

Restrictive Conditions.

184. An application made at any other time than on first registration or on a transfer to register restrictive conditions, under section 84 of the Act of 1875 as amended by the Act of 1897, shall state the conditions to be registered, and shall be signed by the applicant; and if he is not the registered proprietor of the land, by such proprietor also; and the signatures shall be attested. A copy of the conditions, or of the document containing them, shall be delivered at the registry.

Entry of
restrictive
covenants
otherwise
than on first
registration.

As to applications for registration of restrictive covenants on first registration, *see* rr. 18, 26; and as to transfers subject to restrictive covenants, *see* r. 102, Form 36.

As to the registrar's power to refuse the registration of restrictive covenants, *see* r. 149.

Entry restraining a Disposition by a Sole Surviving Proprietor.

185. Where two or more persons apply to be registered as joint proprietors of land or of a charge, the registrar shall make an entry in the register in Form 52 in the First Schedule hereto; unless satisfactory evidence is produced to him that the proprietors are entitled to the land or charge for their own benefit, or that under the trust upon which they hold the land or charge a sole surviving trustee has power to dispose of the same; in either of which cases the entry need not be made.

When entry
restraining
disposition by
survivor of
two joint
proprietors to
be made.

See L. T. A., 1875, s. 83 (3), and note thereto; also r. 136.

186. An entry in Form 52 in the First Schedule hereto may at any time be made at the request, or with the consent of, the joint proprietors.

Power to
make entry
restraining
dispositions
by a sole sur-
viving pro-
prietor at any
time with the
consent of
joint pro-
prietors.

RR. 187—
189.
—
ENTRY WHERE
SURVIVING
JOINT PRO-
PRIETOR HAS
NO POWER OF
DISPOSITION.

—
When re-
straining
entry made,
registrar to
inquire into
title off the
register.
“Equitable
title.”

187. When such an entry has been made, and the joint proprietors have been reduced to the number specified therein, the registrar shall, before entering on the register any disposition by the registered proprietor, require the production of the equitable title; and may give such notices to the persons, or some or one of the persons, equitably entitled as he may deem expedient.

“The equitable title” must mean the beneficial title off the register, whether legal or equitable: *see* note to L. T. A., 1875, s. 49.

*Caution against dealing with Registered Land or Charges
under Section 53 of the Act of 1875.*

Cautions.

188. A caution against dealing with registered land or a registered charge, lodged under the 53rd section of the Act of 1875 shall be in Form 53 in the First Schedule hereto; and a caution against the registration of a possessory or qualified title as qualified or absolute shall be in Form 54 in the First Schedule hereto. The caution shall be signed by the person lodging the same or his solicitor, and shall contain an address for service in the United Kingdom, and the declaration in support of the caution shall be in Form 12 in the First Schedule hereto, or to the like effect, and shall contain a reference to the land or charge to which it applies, and to the registered number of the title, and shall also state the nature of the interest in such land or charge of the person lodging the caution.

Different
kinds of
cautions.

As to cautions against first registration of land, *see* rr. 74—77. The different kinds of cautions must be distinguished, though the declaration (Form 12) is made to do duty for both.

For the effect of cautions as regards mortgages by deposit of certificate, *see* L. T. A., 1897, s. 8, last paragraph.

Caution
should con-
tain two
addresses for
service.

The caution should contain two addresses for service (r. 260), one the personal address of the cautioner, and the other of his solicitor, for the cautioner might be abroad, and not receive the notice before the caution is withdrawn: r. 191.

How land to
which
cautions
relate to be
described.

189. It shall not be necessary that the land to which a caution relates should be described therein in any particu-

lar manner, if sufficient particulars are given by plan or otherwise to identify on the proper ordnance map the land to which the caution is intended to apply.

RR. 189—
192.
CAUTIONS.

For instance, if the cautioner is interested in the whole of the land comprised in a title, it would be sufficient to refer to the filed plan : *c/f.* r. 150.

190. The period to be limited by the notice to be served on the person lodging the caution shall be fourteen days, or such other period (not being less than seven days), as the registrar may, under special circumstances, direct. The notice shall be in Form 55 in the First Schedule hereto. Any consent given under section 54 of the Act of 1875 by the person lodging a caution shall be signed by him, and shall be attested.

Fourteen days' notice to be given under cautions.

Consent by cautioner to registered disposition.

If preferred, the cautioner may give his consent by joining in the instrument of transfer or charge : r. 155.

191. When the notice required by a caution has been given in respect of the whole of the land comprised in it, and the period named in the notice has expired, the caution shall, unless the registrar shall otherwise direct, be deemed to be exhausted, and shall be withdrawn from the register.

Caution exhausted after notice given.

This Rule seems to imply that notice may be given with respect to part of the land comprised in a caution (*see*, however, Form 55), and then that the caution would be exhausted only with respect to that land.

Withdrawal of caution as regards part of land.

See also L. T. A., 1875, s. 54.

192. A caution may at any time be withdrawn upon an application for that purpose in Form 56 in the First Schedule hereto, signed by the person lodging the caution or his solicitor, and thereupon the entry thereof on the register shall be cancelled: but any liability under the Act of 1875 of a person lodging a caution to indemnify or make compensation shall not be affected by such withdrawal.

Power to withdraw cautions.

It is conceived that, if the original cautioner were dead, or had disposed of his interest in the land, his successor could, notwith-

Query, power for person deriving title under cautioner.

RR. 193—195. standing this Rule, withdraw the caution: *see* r. 16, *supra*; and *cf.* r. 202, *infra*.

CAUTIONS.

Improper
lodgment of
caution.

Ecclesiastical
Commis-
sioners to
have power to
lodge cautions
or apply for
inhibitions.

As to the liability for improperly lodging a caution, *see* L. T. A., 1875, s. 56; if the caution is withdrawn before any damage is incurred, there can be no liability.

193. In order to give due effect to any arrangement with respect to land made under any of the Acts relating to or administered by the Ecclesiastical Commissioners, whether by scheme and Order in Council, grant, conveyance, transfer, or other instrument, the Ecclesiastical Commissioners for England shall be deemed to be persons interested within the meaning of sections 53 and 57 of the Act of 1875.

See also as to Ecclesiastical Commissioners, rr. 98—100, *supra*; and rr. 197—199, *infra*; also L. T. A., 1897, s. 15.

Inhibitions.

Application
for inhibi-
tions.

194. An application for an inhibition under the 57th section of the Act of 1875 shall either be accompanied by the consent in writing of the registered proprietor of the land, or shall be supported by the statutory declaration of the applicant and such other evidence (if any) as the Court, or the registrar, as the case may be, may deem necessary.

See also r. 197, *infra*.

For a general inhibition against dealings, *see* r. 144, Form 9.

As to the effect of inhibitions on mortgages by deposit, *see* L. T. A., 1897, s. 8, last paragraph, note; and r. 197, *infra*.

For examples of inhibitions, *see* Forms 6, 9, 10, 59.

Notice of
application
for inhibition
to be given to
registered
proprietor.

195. In the absence of any such consent by the registered proprietor, notice of the application shall be given to him, and, if necessary, an appointment shall be made for hearing the same.

As to the jurisdiction of the registrar, *see* rr. 231—233, and of the Court, r. 234.

The form of the inhibition will determine the manner of its withdrawal: and *see* r. 16, *supra*.

Restrictions.

RR. 196—
198.

RESTRICTIONS.

Application
for or with-
drawal of
restrictions.

196. An application for a restriction on transferring or charging land or a charge under the 58th section of the Act of 1875 as amended by the Act of 1897, shall be in Form 57 in the First Schedule hereto, and shall state the particulars of the restriction required to be entered on the register, and shall be proceeded with as the registrar shall direct; and an application under the 59th section of the Act of 1875 to withdraw or modify any restriction shall be in Form 58 in the same schedule, and shall be signed by all persons for the time being appearing by the register to be interested in the restriction; and the signatures shall be attested.

See L. T. A., 1875, ss. 58, 59, and notes thereto.

As to the effect of restrictions on mortgages by deposit, *see* note to L. T. A., 1897, s. 8, last paragraph.

For examples of restrictions, *see* Forms 6, 7, 8, and the form suggested in note to r. 81, *supra*.

Restrictions will be applicable also in the cases of registered incumbrances and sub-charges: rr. 124, 125.

Inhibitions on Land held by Incumbents of Benefices.

197. Where land is transferred to the incumbent of a benefice and his successors, an inhibition shall be entered in the register and on the land certificate in Form 59 in the First Schedule hereto, or to the like effect.

Inhibitions on
land held by
incumbents.

See L. T. A., 1897, s. 15 (1) (ii); also note to last paragraph of s. 8, as regards the bearing of this inhibition on mortgages by deposit. As to its effect on completion, *see* note to s. 16.

See also as to Ecclesiastical Commissioners, r. 193, *supra*.

198. In the case of a sale by an incumbent under the Glebe Lands Act, 1888, or any Act amending or extending the same, the receipt of the Board of Agriculture for the purchase money shall be deemed to be a certificate in accordance with section 15 of the Act of 1897, and shall

Sale by
incumbents
under Glebe
Lands Act,
1888.

RR. 198—
209.

be a sufficient authority to the registrar to register the transfer.

INCUMBENTS
OF BENEFICES.

See L. T. A., 1897, s. 15 (1) (i); this Rule seems to have been necessary because the practice of the Board of Agriculture is to give receipts only.

Certificate on
sales by
incumbents as
to compliance
with statutory
requirements.

199. In all other cases of dispositions by incumbents the certificate to be given in accordance with section 15 of the Act of 1897 shall be a certificate in Form 60 in the First Schedule hereto, or to the like effect.

See L. T. A., 1897, s. 15 (1) (i), (ii), last paragraph.

Notice of Deposit of Certificate.

Power to
give notice of
deposit of
certificate as
security for
money.

200. Any person with whom a land certificate, office copy registered lease, or certificate of charge is deposited as security for money may by registered letter, or otherwise in writing, give notice to the registrar of such deposit, and of his name and address; and shall describe (by reference to the county and parish or place and number of the title) the land to which the certificate or lease relates, and on receipt of such notice the registrar shall enter the same in the Charges Register, and shall give a written acknowledgment of its receipt. The entry in the register of such notice shall operate as the lodgment of a caution under the 53rd section of the Act of 1875.

See L. T. A., 1897, s. 22 (6) (f).

As to deposit of land certificate or certificate of charge, see L. T. A., 1897, s. 8, last paragraph; office copy leases will soon become obsolete: see rr. 43, 45—55.

As to deposit of certificates of incumbrance or sub-charge, see r. 126.

No new certificate will be issued without notice while the notice is in force (see next Rule); as to cautions, see also, rr. 188—193, *supra*.

As to loss of indemnity if notice of deposit is not given, see L. T. A., 1897, s. 7 (3).

Ordinary cautions under L. T. A., 1875, s. 53, are to be entered in the Proprietorship Register (r. 6), and not, as in this case, in the Charges Register.

201. So long as a notice of such a deposit is on the register, no new certificate shall be issued under section 8 (3) of the Act of 1897 without notice to the person by whom the notice of deposit was given.

RR. 201—
203.

NOTICE OF
DEPOSIT OF
CERTIFICATE.

L. T. A., 1897, s. 8 (3), provides for the issue of new certificates, under certain safeguards, on destruction or loss of original.

No new
certificate to
be issued so
long as notice
of deposit is
on register.

202. The notice of deposit may be withdrawn from the register on the written request, signed and attested, of the person who gave such notice, or his successor in title; or, when such person consents in writing, on the like request of the registered proprietor of the land, accompanied in each case by the land certificate, office copy registered lease, or certificate of charge.

Withdrawal
of notice of
deposit.

Compare r. 192, *supra*, which provides for the withdrawal of a caution; in that case no express power is conferred on the successor, but a solicitor may sign the request: *ib.*

See as to withdrawals generally, r. 16.

Entry of Value of Land on the Register.

203. On the first registration of land, and on subsequent changes of proprietorship, the registrar shall, whenever practicable, enter in the register, and on the land certificate, the price paid or value declared. The original amount of every charge shall also be entered on the register, and on the charge certificate.

Entry of
value on the
register.

See L. T. A., 1897, s. 22 (6) (h). These entries will enable an intending mortgagee to obtain a rough estimate of value in like manner as by inspection of title deeds. He may obtain an order from the proprietor for inspection of entries, whether withdrawn or not, in the register, and thus ascertain the names of persons who paid purchase-money or made an advance: r. 222.

Searches for
documents
and past
entries.

"Value declared": see Forms 1, 2, 3, and 5. This is required for assessing, *ad valorem*, fees at the registry: r. 265, *infra*.

"Value
declared."

RR. 204—
207.

CERTIFICATES.

PART V.

Miscellaneous.

Certificates.

Forms of
certificates.

204. A land certificate shall be in Form 61, and a certificate of charge in Form 62, in the First Schedule hereto.

As to issue of land certificates, *see* rr. 19, 39; L. T. A., 1897, s. 8; land certificates are now applicable to leaseholds: r. 55.

For certificates of incumbrances and sub-charges, *see* r. 126.

Certificate to
be made up
in divisions.

205. The certificate shall be made up in divisions, corresponding to the divisions of the register, so as to leave room for the addition thereto of subsequent entries in the register. For this purpose fresh pages may be added to the certificate from time to time as may be necessary.

“The divisions of the register”: r. 2.

Contents of
the three
registers.

As to contents of the Property Register, *see* rr. 3—5, 67, 86, 91, 175—177, 203, and 212.

As to contents of the Proprietorship Register, *see* rr. 6, 67, 128, 141, 185, 188—199, and 206.

As to contents of the Charges Register, *see* rr. 7, 18, 23, 54, 83, 91, 166, 170, 171, 178, 184, and 200.

There is a separate register for leaseholds: L. T. A., 1875, s. 11.

Receipt to be
signed for
certificate,
and note to
be entered
whenever a
certificate is
deposited in
or delivered
out of
registry.

206. Whenever a certificate is delivered out of the registry a receipt shall be first signed by the recipient. Whenever the certificate is deposited in or delivered out of the registry, a note to that effect shall be entered in the Proprietorship Register.

See L. T. A., 1897, s. 8.

When new
certificate
may be issued
without pro-
duction of
original.

207. Except in the cases mentioned in section 8, subsections (3) and (4), of the Act of 1897, and in the case of registration of a foreclosure under Rule 110, no new certificate or office copy registered lease shall be issued unless the existing certificate or copy is delivered up to the registrar to be cancelled.

See also r. 201, *supra*.

The case mentioned in L. T. A., 1897, s. 8 (4), is where a chargee exercises his power of sale.

Where a paramount mortgagee sells, effect may be given on the register to the sale (r. 101); but, unless the mortgagee has registered his incumbrance (r. 121), it will be necessary to account for the land certificate before either a new certificate is granted: L. T. A., 1897, s. 8 (1), (3), (4); and *see* L. T. A., 1875, s. 8, note. The registrar has power to compel production of the certificate: L. T. A., 1897, s. 8 (1).

RR. 207—
210.

CERTIFICATES.

Land certificate required on sale by paramount mortgagee.

208. Where a certificate is required to be produced to the registrar but cannot be produced at the registry without disproportionate trouble, expense, or delay, the registrar may authorize an officer of the registry, or a solicitor, to inspect it elsewhere, at the expense of the applicant, and to make the proper endorsement (if any) thereon, and to authenticate the same on behalf of the registry.

Power for registrar to authorize solicitor to inspect and endorse certificates on behalf of registry.

For cases where certificate must be produced, *see* L. T. A., 1897, s. 8 (1), and rr. 197, 202; also note to last Rule.

The general rule is that the certificate must be produced on all entries except those adverse to the power of disposition of the registered proprietor (*see* r. 225), *i.e.*, notices of leases (r. 166), of right to dower (r. 170), of death duties (r. 171), of incapacity of survivor of joint proprietors, *query* (rr. 185—187), cautions (r. 188), ordinary inhibitions (r. 194), restrictions, *query* (r. 196), notice of deposit (r. 200), and of appeal (r. 245); all these matters will, however, be entered on the certificate whenever noted up: *see* Forms 61, 62. For further exceptions, *see* L. T. A., 1897, s. 8 (4), and r. 207; *see*, also, r. 225.

General rule as to production of certificate.

Maps and Verbal Descriptions of Land.

209. The ordnance map, on the largest scale published, shall be the basis of all registered descriptions of land.

Ordnance map to be basis of registered descriptions of land.

As to incorporeal hereditaments, *see* rr. 61—67.

For case of conflict between plan and verbal description, *see* r. 221.

It will be best to permit the plan to be prepared at the registry: r. 215.

210. The boundaries of the land shall be shown by an edging of red colour. Enlargements and explanatory notes may also be made, where it is considered desirable to add them.

Boundaries, enlargements and explanatory notes.

The edging will be outside the land comprised in the title.

RR. 210—
213.

**MAPS AND
VERBAL
DESCRIPTIONS.**

Notes on plan
substituted
for verbal
description in
register.
Power to
ascertain
precise
boundaries.

The notes on the plan, if sufficiently exhaustive, will in many cases render a verbal description of the land on the register unnecessary (*see* rr. 212, 214), but a schedule (*see* rr. 217, 218) in the case of large estates should at any rate be added.

211. If it is desired to indicate on the filed plan, or otherwise to define in the register, the precise position of the boundaries of the land or any parts thereof, notice shall be given to the owners and occupiers of the adjoining lands, in each instance, of the intention to ascertain and fix the boundary, with such plan, or tracing, or extract from the proposed verbal description of the land as may be necessary, to show clearly the fixed boundary proposed to be registered; and any question of doubt or dispute arising therefrom shall be dealt with as provided by these Rules.

See as to boundaries, L. T. A., 1897, s. 14.

As to questions of doubt or dispute, *see* r. 272, *infra*.

Power to add
particulars of
precise
boundaries to
filed plan.

212. When the position and description of the boundaries of the land have been thus ascertained and determined, the necessary particulars shall be added to the filed plan, which shall then be deemed to define accurately the fixed boundaries, and a note to that effect shall be made in the Property Register.

Exact
boundary line
to be undeter-
mined unless
precise
boundaries
have been
ascertained.

213. Except in cases in which the fixed boundary of the land has been thus ascertained, the map shall be deemed to indicate the general boundaries only. In such cases the exact line of the boundary will be left undetermined (as for instance whether it runs along the centre of a wall or fence, or its inner or outer face, or how far it runs within or beyond it; or whether or not the land registered extends to the centre of an adjoining road or stream). When a general boundary only is desired to be entered in the register, notice to the owners of the adjoining lands need not be given.

Indemnity as
regards
boundaries.

The result of this Rule is that, where the boundary is left undetermined, no indemnity will be given if the dispute is confined to the general boundary line: L. T. A., 1897, s. 7.

214. Where, and so far as, physical boundaries or boundary marks do not exist, the fullest available particulars of the boundaries shall be added to the plan.

RR. 214—
219.

MAPS AND
VERBAL

DESCRIPTIONS.

This Rule appears to be applicable whether a precise boundary is fixed or not.

Particulars of
physical
boundaries to
be added to
plan.

215. A plan shall not be accepted for registration until it has been approved by an officer of the registry, or by such other person as the registrar shall authorise for the purpose.

Plan to be
approved
before it is
accepted for
registration.

216. When the necessary plan cannot be prepared without a revision of the ordnance map, the officers of the registry shall, if required by the applicant, make the necessary revision. In districts where registration of title is compulsory, the revision shall be made without charge.

Revision of
ordnance
map.

As to costs of mapping, see Fee Order, 1898, Chap V., *infra*; and L. T. A., 1897, Second Schedule.

217. When an applicant desires to enter any verbal particulars or description of land on the register, they shall be submitted to the registrar for his approval. Such particulars shall contain a reference to the filed plan of the land, and shall be compared therewith by an officer of the registry.

Verbal
particulars.

Compare L. T. A., 1897, s. 14.

218. When such particulars consist of or refer to a detailed list by schedule or otherwise of separate portions of the land, each portion so detailed shall be distinguished, if possible, by a number or other reference in the list and on the filed plan.

Description
by schedule.

219. In districts where registration of title is compulsory, the registrar shall be furnished by the local authorities with particulars of alterations of names and numbers of streets and houses from time to time made, for future reference; and any correction of the register rendered necessary by such alterations may be made.

Alterations of
names and
numbers of
streets.

See also as to verbal corrections, rr. 15, 16, *supra*.

RR. 220—
222.
——
MAPS AND
VERBAL
DESCRIPTIONS. **220.** Renewal, revision, or correction of plans and verbal descriptions of land, may be made at any time on the application in writing of the registered proprietor, upon the production of such evidence and the giving of such notices as the registrar may deem necessary.
——
Revision of plans and descriptions. See also rr. 15, 16, 219.

Conflict between verbal particulars and plans. **221.** Where any conflict arises between verbal particulars and a plan, the plan shall prevail, unless the registrar shall otherwise direct.

Alteration of rule of construction. An entry that the verbal particulars are to prevail could, it is conceived, only be made upon first registration, or upon the proper notices being given : *cf.* r. 220.
The plan, it seems, must be taken to include any explanatory notes and particulars added to the plan (rr. 210, 212), and then this alteration of the general rule of construction may be found to work well ; for, clearly, many matters cannot accurately be defined by plan unless the notes are to prevail.

Inspection, Searches, and Copies of the Register.

Inspection of register including back entries by person interested in land or charge. **222.** An application to inspect any entry in the register or any document in the custody of the registrar relating to any land or charge, may be made by, or under the authority of, any person interested in the land or charge ; and when not made by, or under the authority of, the registered proprietor, or with his consent in writing, shall only be made on notice to him ; unless the applicant shall satisfy the registrar that, by reason of the death of a sole registered proprietor, or for any other sufficient reason, he cannot obtain the requisite authority for or consent to such inspection, and that such inspection is reasonable and proper, and that notice thereof cannot be given. No document not referred to in the register shall be inspected without an order of the registrar. Inspection may be had of entries in the register which have been withdrawn, as well as of entries still in operation.

What documents should not be filed. Compare L. T. A., 1897, s. 22 (7) ; *see* also L. T. A., 1875, s. 104.
As no document not referred to in the register can be inspected without an order from the registrar, it is desirable that such docu-

ment should not be filed. But, in the case of stipulations in a registered charge, it is better to place them under "C" (*see* Form 39) than to insert them in a separate deed: *see* note to r. 107.

RR. 222—
226.

INSPECTION,
SEARCHES,
AND COPIES
OF REGISTER.

223. Every inspection shall be made in the presence of an officer of the registry, and every copy or note of, or extract from, any register or document in the custody of the registrar shall be made by the person inspecting in pencil only. No ink shall be used.

Inspection to
be in presence
of officer of
registry.

Ink not to be
used.

224. Any person authorised to inspect the entries in the register relating to any title, charge, or incumbrance, may apply to the registrar in writing, signed by himself or his solicitor, to make an official search (describing the nature of the search required) against such title, charge, or incumbrance, and to issue a certificate of the result; and the registrar, on receipt of such application, shall make the search and issue the certificate accordingly. The certificate of the result of such search shall be in Form 63 in the First Schedule hereto.

Official
searches.

"Any person authorised to inspect," *see* r. 222.

225. Any registered proprietor may apply to the registrar by telegraph to search whether any caution, restriction, inhibition or notice has been entered against any specified title, charge or incumbrance since a date to be named; which must not be earlier than the date of the land certificate or certificate of charge held by the applicant.

Application
for search by
telegraph by
registered
proprietor.

This search can only be required by the registered proprietor, and will extend to such matters only as may be entered on the register without the production of the certificate: *see* note to r. 208.

See, also, L. T. A., 1897, s. 8, last paragraph, and note thereto.

226. The application shall give the number of the title and the parish or place under which it is registered, and in the case of a charge or incumbrance shall give a sufficient description thereof, and shall be signed by the registered proprietor (or by his solicitor, describing himself

Particulars to
be given on
application
for search by
telegraph.

RR. 226—
230.

INSPECTION,
SEARCHES,
AND COPIES
OF REGISTER.

as such, and giving the name of the proprietor), and shall give the name and address of the person to whom the answer is to be sent. The fee for the search shall be sent by the same telegram, and the reply must be prepaid.

See L. T. A., 1897, s. 8, last paragraph, and note thereto.

Result of
search to be
sent by
telegram.

227. Upon the receipt of such an application the search shall be made forthwith, and the result "yes" or "no" shall be sent by telegram to the person named in that behalf in the application, repeating the number of the title, the parish or place, the date at which the search commences, and, in the case of a charge or incumbrance, the description thereof.

These particulars are necessarily repeated, for as the registered proprietor or his solicitor applies for the search, the mortgagee or other person who acts on the result of the search must be advised that a proper search has been made.

Indemnity to
persons acting
on official
certificate of
search.

228. When a solicitor or other person obtains an official certificate of the result of a search he shall not be answerable in respect of loss that may arise from any error therein. When the certificate is obtained by a solicitor acting for trustees, executors, or other persons in a fiduciary position those persons also shall not be so answerable.

Compare C. A., 1882, s. 2 (8), (9), (10).

Powers of
trustees in
relation to
registered
land.

This Rule tends to show that trustees may rely on the provisions of the Acts, and thus invest money on the security of registered land: but see L. T. A., 1897, s. 8, last paragraph, note.

Office copies
of entries in
the register
or of docu-
ments.

229. An office copy of any entry in the register, or of any document in the registry, shall, upon an application in writing by him or his solicitor, be issued to any person who is entitled to inspect such entry or document.

For persons entitled to inspect, see r. 222.

Inspection of
register after
land removed
therefrom.

230. When any land has been removed from the register, the last registered proprietor of the land or of any charge thereon may, for a period of two years from the date of such removal, inspect the register and have office copies of the entries supplied to him. After two years from the

removal no inspection shall be allowed, or office copy be issued, except by order of the registrar, given after satisfying himself that the applicant is interested, and that the application is reasonable.

See L. T. A., 1897, s. 17; also note to L. T. A., 1875, s. 8.

RR. 230—
233.

INSPECTION,
SEARCHES,
AND COPIES
OF REGISTER.

Appeals and Applications to the Court.

231. In all mere formal matters the decision of the registrar shall be final, unless the registrar, or the Court, gives leave to appeal therefrom.

In formal
matters deci-
sion of regis-
trar to be final
unless leave
given to
appeal.

The difficulty as regards this Rule will be to decide whether the point at issue is a "mere formal matter" or not: see also r. 276.

232. In all other cases, questions arising before the registrar upon any application as to the registration of a title, incumbrance, or charge, or as to any dealing with any registered title, incumbrance, or charge, or any matter entered or noted in or omitted from the register, or as to the amendment or withdrawal from the register of any certificate or other document, or as to any claim for indemnity (whether such questions relate to the construction, validity, or effect of any instrument, or the persons interested, or the nature or extent of their respective interests or powers, or as to order of priority, or the mode in which any entry should be made or dealt with in the register, or otherwise) shall be determined by the registrar, subject to appeal to the Court; but the registrar may, if he thinks fit, instead of deciding the question himself, refer it at once to the Court for decision.

Questions
arising before
registrar to
be decided by
him subject
to an appeal
to the Court.

This Rule seems to confer a jurisdiction on the registrar in all matters coming before him: see also r. 272.

Jurisdiction
of the
registrar.

233. Subject to the provisions of the two preceding Rules, any person aggrieved by an order or decision of the registrar may appeal to the Court.

General right
of appeal from
registrar.

The last Rule gives a right to appeal, but under r. 231 an appeal will not lie without leave.

As to the time within which appeals should be made, see r. 244.

RR. 234—
237.

APPEALS AND
APPLICATIONS
TO THE COURT.

Jurisdiction
under
L. T. As.
assigned to
senior Judge
of Chancery
Division.

No jurisdic-
tion of County
Court.

234. All jurisdiction powers and duties by the Acts or these Rules expressed to be vested in the Court of Chancery, or in the Court, including the hearing of any appeal under section 116 of the Act of 1875, shall until further order be assigned to and vested in and exercised and performed by the senior Judge for the time being of the Chancery Division of the High Court of Justice. In his absence, or on his request, any other Judge of that division, and during vacations any person acting as vacation Judge, may act for him.

L. T. A., 1875, s. 116, relates to appeals from County Courts, but at present those Courts appear to have no jurisdiction in matters arising under the Acts and Rules, nor is it perhaps advisable that they should.

Statement to
be prepared
on reference
by or appeal
from registrar
to the Court.

235. Upon any application to the Court on reference by or appeal from the registrar, or for the rectification of the register, under section 96 of the Act of 1875, a statement shall be prepared by the applicant or such other person as the registrar shall direct, and be settled and signed by the registrar, and forwarded to the Court through the registry before the hearing.

As to references from the registrar, *see* r. 232; as to appeals, r. 233.

See also as to rectification, L. T. A., 1897, ss. 7 (2), 12; and rr. 16, 101, *supra*.

Applications
to be made by
summons or
motion.

236. All applications to the Court on reference by or appeal from the registrar shall be by summons. All other applications to the Court may be by summons or motion; except appeals under section 116 of the Act of 1875, which shall be by motion. All such applications shall be heard and decided by the Judge in person.

S. 116 of the L. T. A., 1875, relates to appeals from County Courts; these Courts, however, do not have any jurisdiction at present as regards registered land: r. 234.

Form of sum-
mons; filing
of same and
order there-
under.

237. Upon application to the Court, on reference by, or on appeal from, the registrar, the summons shall be in Form 64 in the First Schedule hereto, with such variations

as the circumstances may require : and shall be addressed to all the persons upon whom it is to be served ; and they are to be named therein as defendants. If the application is by way of appeal, the summons shall be taken out by the appellant : but if by way of reference, it shall be taken out by such person as the registrar shall direct : who shall be named therein as plaintiff. The summons shall be duly stamped, and shall be sealed in the land registry, and when the summons has been disposed of, it shall, with the order made thereon, be filed in the registry.

RR. 237—
240.

APPEALS AND
APPLICATIONS
TO THE COURT.

238. Every such summons shall be served, according to the usual practice in the High Court, upon the persons to whom it is addressed, at least seven clear days before the date named in the margin for the hearing thereof. The person served is not required to enter any appearance.

Service and
entry of
appearance.

239. Upon any other application authorised to be made to the Court by summons the same form of summons may be adopted, with all necessary modifications : and the question for the decision of the Court may be set forth either in the body of, or in a Schedule to, the summons, or may be annexed to it. The order made on any application to the Court shall be filed in the registry.

Form of sum-
mons may be
varied.
Order of
Court to be
filed in the
registry.

“ Any other application, . . . ” i.e., not being on reference by, or on appeal from the registrar : r. 237.

As to actions for specific performance, see L. T. A., 1875, ss. 93, 94.

240. When any party to an application fails to attend at the time fixed for the hearing thereof, or any adjournment thereof, the Court shall have the same powers in every respect as if Order 54, Rules 5 to 7 of the Rules of the Supreme Court were herein repeated : and if the Court does not think it expedient to proceed *ex parte*, it may appoint another day for the hearing of the application.

Failure of
party to
application to
attend.

Rules 5—7 of the R. S. C. enable the Court to proceed *ex parte* where any party fails to attend ; but a proceeding may be reconsidered if the Court is satisfied that the failure to attend was not occasioned by wilful delay or negligence ; and the Rules contain

Procedure
ex parte.

RR. 240— provisions as to costs in the event of reconsideration and non-
245. attendance.

**APPEALS AND
APPLICATIONS
TO THE COURT.**

**Powers of
Judge.**

241. Upon the hearing of any application the Judge may allow any amendment, or any adjournment of the hearing, or may direct that any other parties shall be brought before the Court, or may remit the matter to the registrar for his decision; and shall have the same powers in every respect as if the summons had been taken out in an action in the Chancery Division pending before him, and he may make any order or give any directions authorised by sections 76 and 77 of the Act of 1875.

Ss. 76, 77 relate to the powers of the Court in the case of persons under disability.

**Drawing up
order.**

242. Any order of the Court may be drawn up by an officer of the registry nominated in writing by the registrar for that purpose, or by the Court registrar for the day, as the Court may direct.

**Fees on
applications
to the Court.**

243. The same fees and charges shall be payable in respect of every application to the Court under the Acts and Rules, and of all proceedings consequent thereon, as would have been payable if the applications and proceedings had been made and taken in an action or matter already pending before the Court: and shall be payable by impressed or adhesive stamps in the same manner as other fees in the registry are now payable.

As to stamp, *see* L. T. A., 1875, s. 113; and as to payment of fees, *see* r. 263.

**Time limited
for appeals.**

244. No appeal shall be brought from a decision or order of the registrar, or of the Court, after twenty-one days from the date of the decision or order, without the leave of the Court, or of the Court of Appeal.

See L. T. A., 1875, s. 117.

**Dealings for
value before
appeal.**

245. No appeal from a decision or order of the registrar, or of the Court, shall affect any dealing for valuable con-

sideration which has been duly registered before a notice in writing of the intention to appeal has been delivered at the registry on the part of the appellant. Such notice shall be entered in the register.

RR. 245—
248.

APPEALS AND
APPLICATIONS
TO THE COURT.

Compare L. T. A., 1875, ss. 95, 96; L. T. A., 1897, ss. 7, 12.

Entry of
notice of
appeal.

246. Service on the registrar of any order or office copy of any order of any Court shall be made by delivering the same at the registry. When the order directs rectification of the register to be made, or any other act to be done, an application therefor shall be delivered at the same time, and the matter shall be proceeded with as the registrar shall direct. Provided that no such rectification, or act, shall be completed until the expiration of four clear days from the day on which the order is made.

Service of
order on
registrar, and
rectification
of register.

Compare r. 161 as to delay in completion.

As to rectification, *see* L. T. A., 1875, ss. 95, 96; L. T. A., 1897, ss. 7, 12.

247. Subject to the provisions as to costs contained in the Acts, the costs of and incident to all applications to the Court upon reference or appeal or otherwise shall be in the discretion of the Court.

Litigious
costs at
discretion of
Court.

See, also, r. 269, and note.

See L. T. A., 1897, s. 7 (5), as to costs of an appeal from a decision of the registrar on a question of indemnity; and as to costs in an action for specific performance, *see* L. T. A., 1875, s. 94. As to reasonable charges for attendance, *see ib.* s. 110.

References to Counsel.

248. The examiners of title for the purposes of these Rules shall be the conveyancing counsel to the High Court, and such other barristers experienced in conveyancing as the Lord Chancellor shall from time to time appoint, and the business referred to them shall be distributed in rotation.

Examiners of
title.

The effect of this Rule is that the Lord Chancellor may appoint additional conveyancing counsel, whose duties, under the appointment, will be confined to matters under the L. T. As.

Power of
Lord Chan-
cellor as to
conveyancing
counsel.

See also r. 31, *supra*.

RR. 249—
252.

REFERENCES
TO COUNSEL.

Objections to
opinions of
examiners.

Special
references.

249. Any person may object to the opinion given by any examiner of title, and thereupon the point in dispute shall be decided by the registrar. And he may, if he thinks fit, under special circumstances, direct or transfer a reference to any one in particular of the examiners of title.

See, also, rr. 232, 272.

Power for
registrar to
take advice of
specialist.

250. When, in the course of any proceeding in the registry, a question arises which, in the opinion of the registrar, involves for its determination any special exceptional knowledge of some branch of law which rarely arises for consideration, the registrar may obtain the advice or assistance therein of any competent person whom he may select, and may act upon his opinion.

Abatement.

Proceedings
not to abate.

251. In case of death or transmission or change of interest pending an application for registration the proceedings shall not abate, but may be continued by any person entitled to apply for registration who desires to adopt them.

As to neglected applications, *see* r. 262, *infra*.

Abstracts and Documents.

Custody and
examination
of abstracts
and docu-
ments.

252. All abstracts and copies of documents and all documents for registration delivered at the registry shall be retained there, pending completion of the registration to which they relate; and afterwards such of them as have not under these Rules to be retained in the registry shall be dealt with as the registrar shall direct. Abstracts and documents left for reference or otherwise shall be examined and verified by such persons and in such manner as the registrar shall direct.

As to what documents are retained at the registry, *see* r. 162, *supra*.

For a power for the registrar to appoint a solicitor to inspect documents away from the registry, *see* rr. 30, 208.

253. The registrar may require an abstract or concise statement of any deeds and documents delivered at the registry for perusal in the course of any registration proceeding, to be furnished and duly verified.

RR. 253—
256.

ABSTRACTS
AND
DOCUMENTS.

254. All documents (other than maps or plans) to be filed in the registry shall be printed, type-written, lithographed, or written on stout paper, foolscap size, and shall allow a sufficient stitching margin, in order that they may be conveniently bound.

Registrar may require abstract or concise statement of documents.

Documents to be printed, type-written, lithographed, or written on foolscap.

255. All documents not required by the Acts or Rules to be retained in the registry may, when no longer required, be returned to the persons who produced the same, or their successors in title, and the registrar may direct the destruction of any documents which such persons decline to accept. The registrar may also direct the destruction of any documents in his possession or custody where they have become altogether superseded by entries in the register, or have ceased to have any effect.

Documents not required to be retained at registry to be returned.

Power for registrar to direct destruction of documents superseded by entries in register.

As to what documents are retained at the registry, *see* r. 162.

For the express power to make this Rule, *see* L. T. A., 1875, s. 111 (3).

Preparation and Service of Notices and Summonses.

256. All notices and summonses required to be given or served for any purpose shall be prepared on the official forms and under the stamp of the registry. If the service of the notices or summonses is personal, it shall be proved by statutory declaration; if the service is through the post, it shall be made by registered letter, in conformity with section 90 of the Act of 1875; except in the case of notices under Rule 161, which need not be registered.

Notices and
summonses.

Rule 161 provides for notice to the registered proprietor before a disposition by him is registered.

All notices, except those in relation to Court matters (r. 238), appear to be capable of service through the post, unless the registrar otherwise directs. Proof of service of notices.

For notices generally, *see* L. T. A., 1875, ss. 89—92.

Statutory declaration includes affidavit: r. 1 (5), *supra*.

RR. 257—
260.

PREPARATION
AND SERVICE
OF NOTICES
AND SUM-
MONSES.

Advertise-
ments and
notices to fix
time within
which act to
be done.

257. Every advertisement and notice issued or sent by or through the registry (other than notices sent under Rule 161) shall fix a time within which any act or step required by such advertisement or notice to be done or taken thereunder is to be done or taken; and shall state what will be the consequence of any omission to comply therewith. It shall also state in what manner and within what time any answer or objection or other communication arising out of such advertisement or notice is to be made, and the address at or to which it is to be delivered or sent. All subsequent proceedings thereunder shall be conducted in accordance with these Rules; and, so far as they do not apply, in such manner as the registrar shall direct.

See note to last Rule.

How time to
be calculated
as to notices
sent by post.

258. Every notice, if sent through the post, shall, unless returned by the Post Office, be deemed to have been received by the person addressed within seven days, exclusive of the day of posting, and the time fixed by the notice for taking any step thereunder is to be calculated accordingly. A copy of this Rule shall be set out at the foot of or endorsed on each such notice.

See also as to notices, L. T. A., 1875, ss. 89—92.

This Rule does not apply to notices under r. 161: see r. 257.

As to notices
returned by
post office.

259. On the return by the Post Office of any letter containing any notice, the registrar may either require any further notice to be given, or may authorize substituted service; or may proceed without notice, if, under the circumstances, and having regard to these Rules, he shall think fit to do so.

Addresses for Service.

Registered
address to be
address for
service.
Power to
have two
addresses for
notices.

260. The address of any person as entered in the register shall, unless he shall otherwise direct, be his address for service. Any person may, if he desires, have two addresses entered in the register, to each of which all notices and other communications to him are to be sent.

See L. T. A., 1875, s. 89.

The power to have two addresses will be a useful protection against fraud; a cautioner should always avail himself of this power.

RR. 260—
263.

ADDRESSES
FOR SERVICE.

Statutory Declarations.

261. Statutory declarations made for the immediate purpose of being filed, read, or used in the registry are not chargeable with any Inland Revenue stamp duty. Statutory declarations to be used in the course of registration may be made before the registrar, or any officer of the registry authorized by him in writing, or before any person authorized by law to take statutory declarations. The registrar may, if he think fit, require evidence to be given *vis à voce* before him on oath. All declarations shall be filed in the office, and office copies thereof shall (if required) be taken for use.

No stamp
duty on
declarations
to be filed.
Declarations
before regis-
trar or officer
of registry.
Oral evidence.

Statutory declaration includes affidavit: r. 1 (5).
See also L. T. A., 1875, s. 109; and rr. 267, 268.

Neglected Applications to be treated as withdrawn.

262. When in any matter pending in the registry no step has been taken for a period of two months, notice may be given to the applicant, or his solicitor, that the matter will be treated as abandoned unless duly prosecuted within a time (not being less than one month), to be fixed by the registrar, and named in the notice; and at the expiration of that time, the matter, if not prosecuted, may be treated as abandoned.

Notice of
abandonment
to be given.

"Months" mean calendar months: r. 1 (2), *supra*.

This Rule is required to prevent a neglected application becoming a block on proceedings.

Fees to be paid before any Entry made.

263. No entry shall be made in the register until all stamps in respect of the fees payable under the Acts and Rules have been impressed or affixed on some document delivered at the registry with reference to the proposed registration, and all expenses payable under the Acts and

Fees to be
paid before
any entry
made.

RR. 263— Rules have been paid, or provided for by deposit or otherwise, as the registrar may direct.
266.

FEES TO BE
PAID BEFORE
ANY ENTRY
MADE.

See Fee Order, 1898, Ch. V., *infra*.
As to "deposit," see also L. T. A., 1875, s. 55; L. T. A., 1897, s. 8 (3).
As to inland revenue stamps, see rr. 164, 165, *supra*.

Cancellation of Fee Stamps.

Registrar to
refuse to
receive
insufficiently
stamped
documents.

264. Every officer of the land registry who shall receive any document to or upon which a fee stamp shall be affixed or impressed, under the Acts or Rules, shall immediately on receipt thereof deface the stamp thereon. The registrar is not to receive any document required to be stamped which in his opinion is not sufficiently stamped.

Though the registrar may refuse to receive a document on the ground of insufficient stamp, yet if the stamp is proved sufficient the date of registration will not be affected: r. 165, *supra*.

Evidence of Value may be required.

Registrar
may require
evidence of
value to be
furnished.

265. For the purpose of enabling the registrar to determine the fees payable in any case where the value of the land does not appear on the face of the documents produced, and is required to be known, the registrar may require such evidence of value to be furnished as he may deem fit. In ordinary cases a written certificate of value by a solicitor in Form 65 in the First Schedule hereto may be accepted as sufficient. Such certificate is exempted from stamp duty.

See also r. 203, and note thereto.

Forms to be supplied without Payment.

Ordinary
printed forms
to be supplied
free of charge
to applicants
for registra-
tion.

266. Ordinary printed forms for use in the registry shall be supplied free of charge to applicants for registration.

See also L. T. A., 1875, s. 108.

The printed forms in the First Schedule will require modification in most cases, see r. 146.

"Applicants for registration" include not only applicants for first registration, but also for registration of any disposition which requires registration.

RR. 266—
269.

FORMS TO BE
SUPPLIED
WITHOUT
PAYMENT.

Summonses of Witnesses, and for production of Documents.

267. When any summons has been issued by the registrar under the 109th section of the Act of 1875, as extended by the 8th section of the Act of 1897, to be served upon any person not bound to attend or produce at his own expense, the declaration verifying the service thereof shall also prove that the reasonable charges of the attendance of the person summoned, and of his production of the document (if any) required to be produced, have been paid or tendered to him.

Costs of
persons sum-
moned to
attend.

See also L. T. A., 1875, ss. 71, 110; also rr. 22, 261.

Section 109 of the L. T. A., 1875, gives the registrar power to compel any person to attend or to produce maps, surveys, or books, and to allow reasonable charges for attendance. Section 8 of the L. T. A., 1897, enables the registrar to enforce production of certificates; and the next Rule still further extends the power.

Power to
compel
attendance of
witnesses and
production of
certificates
and other
documents.

268. The registrar shall have the like power with regard to the issue of summonses in respect to any proceeding in the registry as is conferred on him by the 109th section of the Act of 1875 in relation to the registration of any title.

Extension of
power of
registrar as to
issue of
summonses.

See note to last Rule.

Costs.

269. All costs incurred in any proceeding in the registry shall be in the discretion of the registrar, having regard to the provisions as to costs contained in the Acts and these Rules; and shall, unless the parties otherwise agree, be taxed as the registrar shall direct by the taxing officers of the Chancery Division of the High Court of Justice. Any order made by the registrar as to costs may be enforced in the mode provided by section 73 of the Act of

Costs in dis-
cretion of
registrar.
Taxation of
costs.

RR. 269— 1875 with respect to costs, charges, and expenses incurred
271. in or about proceedings for registration of land.

Costs.

See also as to costs, L. T. A., 1875, ss. 63, 68, 73, 94, 110; L. T. A., 1897, ss. 7 (5), 8 (2) (4) (iv), 16 (2); also rr. 216, 247, and next Rule.

As to solicitor's remuneration, *see* r. 271, *infra*.

Costs to be
paid by appli-
cant for first
registration.

270. All costs of and incident to the examination and proof of title (including fees of counsel) and the costs of all searches and inquiries in relation to the title shall be paid by the applicant.

Remunera-
tion of
solicitors.

271. The remuneration of a solicitor in, or incidental to, the registration of land and transactions respecting registered land, shall be regulated in the matters herein-after mentioned as follows:—

- (a) For the first registration of freehold or leasehold land with an absolute or qualified title, the remuneration of the solicitor having the conduct of the business shall be that prescribed in Part I. of the Second Schedule hereto.
- (b) For the first registration of freehold or leasehold land with a possessory title, the remuneration of such solicitor shall be that prescribed in Part II. of the Second Schedule hereto.
- (c) For every completed transfer, charge, exchange, or partition of registered land, or of a registered charge, where no title outside the register is investigated, the remuneration of such solicitor shall be that prescribed in Part II. of the Second Schedule hereto.
- (d) The remuneration prescribed by Part I. of the Second Schedule hereto shall not apply when the title has been deduced or investigated by such solicitor on the occasion of a recent sale, purchase, or mortgage, nor shall it apply to the first registration of land on transfer from the register kept under the Land Registry Act, 1862.

- (e) When, on the occasion of a purchase of unregistered land, the purchaser's solicitor receives the remuneration fixed by the Remuneration Order, 1882, his remuneration for registering a possessory title thereon shall not exceed 2*l.* 2*s.* in cases where the value does not exceed 5,000*l.*, and in cases where the value exceeds 5,000*l.* shall be 5*l.* 5*s.*
- (f) In all cases in which a solicitor would be entitled to charge under Part I. of Schedule I. of the Remuneration Order, 1882, for negotiating a sale, purchase, or loan, or for conducting a sale by auction, he shall be entitled to make the same charges in respect of a similar transaction respecting registered land.
- (g) The remuneration hereby authorized shall not include the disbursements, extra work, business, or proceedings which under section 4 of the Remuneration Order, 1882, are not to be included in the remuneration prescribed by Schedule I. to that Order.
- (h) When a solicitor is concerned for the proprietor of land and also for a person taking a charge thereon, he is to be entitled to receive the charges of the solicitor of the person taking the charge, and one-half of those that would be allowed to the proprietor's solicitor up to 5,000*l.*, and on any excess above 5,000*l.* one-fourth thereof.
- (i) If the solicitor conducting the business acts on behalf of several parties having distinct interests proper to be separately represented, he is to be entitled to make for each such party after the first, an additional charge not exceeding 2*l.* 2*s.* in each case.
- (j) In all cases to which the scales fixed in the Second Schedule hereto apply, a solicitor may, before undertaking the business, by writing under his

R. 271.

Costs.

RR. 271—
274.
Coers.
—

hand communicated to the client, elect that his remuneration shall be according to the Remuneration Order, 1882, excepting Schedule I. to that Order.

- (k) In all transactions respecting registered land, the remuneration for which is not hereby provided for, the Remuneration Order, 1882, excepting Part I. of Schedule I. to that Order, shall regulate the remuneration of the solicitor.

Questions arising on Registration.

Appointments
before regis-
trar to
determine
questions
arising on any
proceeding in
registry.

272. If at any time during any investigation of title, or in any registration or other proceeding in the registry, any question or doubt or dispute arises, notice may, with the consent of the registrar, be given by the applicant to any person interested in such question or doubt or dispute, to the effect that the same will be heard by the registrar at a time to be mentioned in the notice, and that he may attend before the registrar at that time, in person, or by his solicitor or counsel; and on the day appointed the registrar shall proceed to determine the matter.

See also rr. 232, 249, *supra*.

Examinations of Married Women.

Procedure on
examination
of married
women.

273. When any married woman has to be examined in regard to any proceeding in the registry, the matter or thing to which her consent is to be given, or the act to be done by her, or the proceeding to be taken, shall be reduced into or stated in writing before the examination is made, and the person by whom the examination is made shall certify the result thereof to the satisfaction of the registrar.

See L. T. A., 1875, s. 87, and note.

Power for
registrar and
officer of
registry to
take examina-
tions.

274. The examination may be made by the registrar, or any officer of the registry authorised by him in writing or by any person authorised by law to take acknowledgments of deeds by married women.

275. The certificate of the result of the examination shall be in Form 66 in the First Schedule hereto; and shall, unless the registrar shall otherwise direct, be verified by a statutory declaration in Form 67 in the same Schedule, or to the like effect.

RR. 275—
278.
EXAMINATIONS
OF MARRIED
WOMEN.
Certificate of
result of
examination.

Discretionary Power of Registrar.

276. The registrar, if he so think fit, may, in any particular case, extend the time limited, or relax the regulations made by general rules, for any purpose; and may at any time adjourn any proceeding, and make any fresh appointment; and if at any time he is of opinion that the production of any further documents, or evidence, or the giving of any further notices is necessary or desirable, he may refuse to complete or proceed with a registration, or to do any act, or make any entry until such further documents, or evidence, or notices have been supplied or given; and the registrar shall have generally a discretionary power in all mere formal matters.

Discretionary
power of
registrar in
mere formal
matters.

See also rr. 231, 232, *supra*.

The success of the scheme of registration will largely depend on the manner in which this power is exercised. It is to be hoped that, having regard to L. T. A., 1875, s. 86, and L. T. A., 1897, s. 7, the registrar will take a wide view of his powers.

Holidays and Vacations.

277. The registry shall be open to the public daily, except on Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Monday in Whitsun week, Christmas Day and the next following working day, and all days duly appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving.

Holidays.

278. The vacations shall be the same as those in the offices of the Supreme Court, but it shall be the duty of the registrar from time to time to make all necessary provision for the regulation and transaction of business during vacation.

Vacations.

LAND TRANSFER RULES, 1898.

RR. 279, 280.

Former Rules Rescinded.

FORMER
RULES
RESCINDED.
—
Former rules
rescinded.

279. The General Rules of the 24th of December, 1875, the 1st of January, 1889, and the 23rd of November, 1891, and the Provisional Rules of the 29th of December, 1897, are rescinded.

For rules relating to small holdings and titles under the Act of 1862, see Chap. V., *infra*.

Short Title and Commencement.

Short title and
commence-
ment.

280. These rules may be cited as the Land Transfer Rules, 1898, and shall come into operation on the first of November, 1898.

THE FIRST SCHEDULE (a).

FORM 1.—*Application for Registration with a Possessory Title.*
(Rule 17.)

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

I, A. B. of &c., hereby apply to be registered as proprietor with possessory title of the land in the parish of shown and edged with red on the accompanying plan (or comprised in the accompanying deed, or any other particulars sufficient to enable the land to be fully identified on the Ordnance map) the value of which, with all buildings and timber thereon, does not, to the best of my belief, exceed £ .

Where it is desired that a particular verbal description be entered in the register, add I also desire the following verbal description to be entered on the register :—

(Fill in the proposed verbal description.)

To be signed by the applicant or his solicitor.

FORM 2.—*Statutory Declaration by an Applicant for Registration with a Possessory Title.* (Rule 17.)

(Heading as in Form 1.)

I, A. B. of &c., solemnly and sincerely declare as follows :—
That I am in possession [or receipt of the rents and profits] of the land shown and edged with red on the plan [and—if it is desired that a particular verbal description be entered on the

(a) The Official Forms in this Schedule are here printed without comment, but the notes, if any, thereon will be found under the Rules mentioned at the head of each Form.

register—described in the verbal description], now produced **FORMS 2, 3, 4.**
and shown to me marked [and] and that I am
entitled thereto in fee simple for my own benefit (*or otherwise
as the case may be*), and that the value of the land, with all
buildings and timber thereon, does not, to the best of my
belief, exceed £

And I make, &c.

N.B.—If sufficient particulars to enable the land to be fully
identified on the Ordnance map can be furnished without a
plan, no plan need be exhibited, and the declaration can be
altered accordingly.

If the declaration is made by the solicitor, the form must
be altered accordingly, and the deponent must be described
as the solicitor of the applicant.

FORM 3.—Application for Registration with an Absolute Title.

(Rule 25.)

(Heading as in Form 1.)

I, A. B., of &c., hereby apply to be registered as proprietor
with absolute title of the land in the county of and
parish of known as consisting of [*fill in short
particulars of the land sufficient to identify it*] the value of
which, with all buildings and timber thereon, does not, to the
best of my belief, exceed £

To be signed by the applicant or his solicitor.

**FORM 4.—Form of Advertisement in the "London Gazette" of
an application for an Absolute Title. (Rule 33.)**

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

NOTICE.

The following applications have been made for registration
with absolute title:—

No. of Applications.	The Land.				The Applicant.		
	County.	Parish or Place.	Name and Short Description.	Freehold or Leasehold.	Name.	Address.	Description.

FORMS 4, 5.

Plans of the several properties comprised in the applications can be seen at the Land Registry, 34, Lincoln's Inn Fields. Any person may by notice in writing, signed by himself or his solicitor, and delivered at the registry before the expiration of two months from the appearance of this advertisement, object to the registration. The notice must state concisely the grounds of the objection, and give the address in the United Kingdom of the person delivering the notice, and, if it is delivered by a solicitor, must give the name and address of the person on whose behalf it is given.

FORM 5.—*Statutory Declaration on Completion of an Absolute or Qualified Title. (Rule 41.)*

(Heading as in Form 1.)

Application, No. .

We, A. B., of, &c., and C. D., of, &c., solicitor, severally solemnly and sincerely declare, to the best of our respective knowledge, information, and belief, as follows:—

1. That all deeds, writings, and instruments of title, and all leases, charges and incumbrances affecting the title to the land which is the subject of the above-mentioned application, and all facts material to such title, have been disclosed in the course of the investigation of the said title made by the registrar.

2. That the map marked "A" now produced to us comprises, within the part edged with red, the whole of such land, and no more than such land.

3. That the actual possession, or receipt of the rents and profits, of such land is in accordance with the title of the applicant as deduced to the registrar, and that the value of the land with all buildings and timber thereon [*or of the leasehold interest*] does not exceed £ .

4. That the said applicant is not a bankrupt, nor has any receiving order been made against him.

5. That there is no judgment, *lis pendens*, land charge, or other similar incumbrance, registered or unregistered, in existence, affecting the said land.

6. That the means of our respective knowledge, information, and belief are as follows (that is to say):—[*fill in means of knowledge, &c.*].

And we severally make, &c.

NOTE.—If the applicant has no solicitor the declaration may be altered accordingly.

FORM 6.—*Restriction and Inhibition where the Tenant for Life is registered as Proprietor, and there are Trustees of the Settlement, and powers of charging for special purposes.* (Rules 71 and 82.)

FORMS 6, 7, 8,
9, 10.

Restriction.—Until further order no transfer of the land is to be made except on sale or exchange, and the purchase moneys on sale are to be paid to A. B. of &c., and C. D. of &c. [*the trustees of the settlement*] or into Court. No sale of the house and land shown and edged red on the plan attached hereto is to be made without the consent of the said A. B. and C. D. or of the Court, and no charge is to be created without the consent of A. B. and C. D. (*Or where the tenant for life has power to raise a definite sum for his own use, if and when the land has been charged to the extent of £ no further charge shall be created without the consent of the said A. B. and C. D.*)

Inhibition.—On the death of E. F. [*the registered proprietor*] no entry is to be made until further order.

FORM 7.—*Restriction where the Tenant for Life is registered as Proprietor, and has incumbered his beneficial interest, without reserving his right to exercise his statutory powers.* (Rule 71.)

Until further order no transfer or charge is to be registered without the consent of A. B. of &c. [*the mortgagee of the life interest*].

FORM 8.—*Restriction where the Trustees of the Settlement are registered as Proprietors.* (Rule 71.)

Until further order no transfer or charge is to be made without the consent of A. B. of &c. [*the tenant for life*].

FORM 9.—*Inhibition where there are no Trustees of the Settlement, and the Tenant for Life is registered as Proprietor.* (Rule 71.)

No transfer or charge is to be made or created until further order.

FORM 10.—*Inhibition where land is settled to such uses as Two Persons, entered as Proprietors, shall jointly appoint, and subject thereto in Settlement.* (Rule 71.)

After the death of either of the joint proprietors no transfer is to be made or charge created until further order.

FORMS 11, 12, FORM 11.—*Caution (under the 60th section of the Act of 1875) against the first registration of land. (Rule 74.)*

13.

(Heading as in Form 1.)

(*Date.*) A. B., of &c., is entitled to notice of any application that may be made for the registration of the land shown and edged with red on the plan attached hereto.

(To be signed by the person lodging the caution or his solicitor.)

Note.—The statutory declaration in support (in the next Form) must set forth an interest which entitles the person lodging the caution to object to any registration of the land being made without his consent.

The form can be adapted to the case of a manor or an advowson, or other incorporeal hereditament.

If the address given is not within the United Kingdom, an address for service within it must also be given.

FORM 12.—*Statutory Declaration in support of a Caution. (Rules 76 and 188.)*

(Heading as in Form 1.)

I, A. B., of &c., solemnly and sincerely declare that I am interested in the land (*or charge*) referred to in the caution now produced and shown to me marked A [*here state the nature of the declarant's interest*] “as beneficial owner in fee simple,” “tenant for life within the meaning of the Settled Land Acts,” “purchaser under a contract for sale, dated, &c.,” “plaintiff in an action in the Chancery Division of the High Court of Justice, B. v. C., 1897, B 145,” “equitable mortgagee under a memorandum of charge dated _____, under the hand of _____,” *or as the case may be*].

And I make, &c.

(To be declared by the person lodging the caution, or, with the necessary alterations, by his solicitor.)

FORM 13.—*Notice (under the 60th and 62nd sections of the Act of 1875) of an application to register land. (Rule 77.)*

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

District———

Parish———

No. of Application———

Notice.—C. D., of &c., has applied to be registered (*or to have registered in his stead* E. F., of &c.) as proprietor of the

land in the parish (or extra parochial place) of _____ in the county of _____ affected by the caution dated the _____ of _____, 18____, lodged by you in the Office of Land Registry (at _____), and if you intend to appear and oppose such registration you are to enter an appearance for the purpose by lodging an objection to the registration in accordance with Rule 35 at the said office before the expiration of 14 days from the date of the service of this notice. Unless you so appear, the registration will be proceeded with in your absence.

FORMS 13, 14,
15.

Dated the _____ of _____, 18____.

FORM 14.—*Instrument of Transfer of Land.* (Rule 79.)

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

District_____

Parish_____

No. of Title_____

(Date.) In consideration of _____ pounds (£____) I, A. B., of &c., hereby transfer to C. D., of &c., the land comprised in the title above referred to.

Signed, sealed, and delivered } (Signature of A. B.)
by the said A. B. in the } (Seal.)
presence of E. F. of &c.

When the consideration is advanced by different persons in separate sums, or does not consist, or wholly consist, of money, its nature, or the separate payments made, may be concisely stated.

When the transfer is to two or more jointly, no addition need be made to the form.

Where it is to two or more as tenants in common, one of the following forms may be used: "to C. D. and E. F. in equal shares," "to C. D. four-fifths, and to E. F. one-fifth of," and so on. Where the transferor retains a share, add the words "and I the said A. B. retain _____ share or shares."

The amount of the consideration should be stated in words, and repeated in figures—as, for instance, "three hundred and seventy pounds (£370)."

FORM 15.—*Instrument of Transfer of part of the Land comprised in a Title.* (Rule 80.)

As Form 14, adding after "the land" these words, "shown and edged with red on the accompanying plan [and

FORMS 15, 16, —if it is desired that a particular verbal description be entered
 17. on the register—described in the Schedule hereto] being part
 — of the land comprised in the title above referred to.”

Add Schedule, if any.

The plan must be signed by the transferor and by or on behalf of the transferee.

FORM 16.—*Instrument of Transfer to give effect to a settlement, of which the existing Registered Proprietor is to be the Tenant for Life, but the Trustees of the Settlement are to be registered as Proprietors. (Rule 81.)*

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

District——

Parish——

No. of Title——

(*Date.*) In pursuance of the provisions of the settlement dated &c., and made between &c. (*or* created by the will of &c.) under which I, A. B. of &c. am (*or* have the powers of) tenant for life under the Settled Land Acts, 1882 to 1890, and C. D. of &c., and E. F. of &c., are trustees with power of sale under the said settlement (*or* will), I, the said A. B., hereby transfer to the said C. D. and E. F. all the land comprised in the title above referred to, and apply for the registration of the following restriction (*fill in Form 8 and execute as Form 14*).

FORM 17.—*Instrument of Transfer to give effect to a settlement of which the existing Registered Proprietor is to be the Tenant for Life, but the donees of an overriding power of appointment vested in him and another are to be registered as proprietors. (Rule 81.)*

(*Heading and commencement as in Form 16 down to “under which”*) the land comprised in the title above referred to is limited to such uses as I, A. B. of &c., and C. D. of &c., shall jointly appoint and subject thereto to various uses by virtue of which I am (*or* have the powers of) tenant for life under the Settled Land Acts, 1882 to 1890, I hereby transfer to myself and the said C. D. all the said land, and apply for the entry on the register of the following inhibition (*fill in Form 10 and execute as Form 14*).

FORM 18.—*Instrument of Transfer by the representative of a* FORMS 18, 19,
deceased settlor, transferring the land to the Tenant for Life 20.
or to the Trustees. (Rule 81.)

(*Heading and commencement as in Form 16 down to "under which"*) A. B. of &c. is (or has the powers of) tenant for life, under the Settled Land Acts, 1882 to 1890, and C. D. of &c., and E. F. of &c., are the trustees for the purposes of the same Acts (or trustees with power of sale under the said settlement (or will) as the case may be), I, G. H. of &c., with the consent of the said A. B. as tenant for life, hereby transfer to him (or to the said C. D. and E. F.) the land comprised in the title above referred to, and apply for the registration of the following restriction and inhibition (*fill in Form 6 or 8, as the case may be, and execute as Form 14*).

FORM 19.—*The like, transferring the land to the donees of a joint overriding power of appointment. (Rule 81.)*

(*Heading and commencement as in Form 16 down to "under which"*) the land comprised in the title above referred to is limited to such uses as A. B. of &c., and C. D. of &c., shall jointly appoint, and subject thereto to various uses, by virtue of which the said A. B. is (or has the powers of) tenant for life under the Settled Land Acts 1882 to 1890, I, E. F. of &c., with the consent of the said A. B. as tenant for life, hereby transfer to him and the said C. D. all the said land, and hereby apply for the entry on the register of the following inhibition (*fill in Form 10, and execute as Form 14*).

FORM 20.—*Instrument of Transfer where registered land is purchased with capital moneys liable to be laid out in the purchase of land to be settled to the uses of a Settlement, the Tenant for Life being registered as Proprietor. (Rule 81.)*

(*Heading as in Form 16.*)

(*Date.*) In consideration of pounds (£) paid out of capital moneys arising under a settlement dated &c., and made between &c. (or created by the will of &c.) under which A. B. of &c. is (or has the powers of) tenant for life under the Settled Land Acts, 1882 to 1890, and C. D. of &c. and E. F. of &c. are the trustees for the purposes of the same Acts, I, G. H. of &c. [*the vendor*], with the consent of the said A. B., hereby transfer to him all the land comprised in the title above referred to, and we the said C. D. and E. F. hereby apply for the registration of the following restriction and inhibition (*fill in Form 6, and execute as Form 14*).

FORMS 37, 38, 39. prised in title No. , of which I am the registered proprietor).

(To be executed as Form 14 by both parties.)

Note.—If preferred, the transaction may be carried out by two instruments in Form 14 or 15, altering the consideration as follows:—

“In consideration of a transfer (*or* conveyance) of even date herewith (and, *if so*, of the sum of pounds (£) paid to me for equality).”

When and so far as the land taken in exchange is not registered, the conveyance thereof will be in the ordinary form.

If it is desired that a particular verbal description of the land be entered in the register, add after the word “plan” or “hereon,” as the case may be, the words “and described in the [first, second] schedule hereto,”—and add a schedule or schedules at the end.

FORM 38.—*Instrument of Partition.* (Rule 105.)

(Heading as in Form 14.)

(*Date.*) We, A. B., of &c., C. D., of &c., and E. F., of &c., hereby transfer the respective lands shown and edged with red on the accompanying plans (*or* plan) signed by us (*or* on the plan attached hereto *or* endorsed hereon) and (thereon) marked X., Y., and Z. to the said A. B., C. D., and E. F. separately and respectively.

(To be executed as Form 14 by both parties.)

Note.—If preferred, the plan may be tinted in different colours, and the instrument altered to correspond therewith.

If it is desired that a particular verbal description of the land be entered in the register, add after the word “plan” or “hereon,” as the case may be, the words “and described in the [first, second] schedule hereto,”—and add a schedule or schedules at the end.

FORM 39.—*Instrument of Charge.* (Rule 106.)

(Heading as in Form 14.)

(*Date.*) In consideration of pounds (£) I, A. B., of &c., hereby charge the land comprised in the title above referred to with the payment to C. D., of &c., on the of , 18 , of the principal sum of £ , with interest at per cent. per annum, payable [half yearly, quarterly] on the of , &c. in every year.

(To be executed as Form 14.)

Note.—Where the consideration is advanced by different

persons in separate sums or does not consist, or wholly consist, of money, its nature, or the separate payments made, may be concisely stated.

Form 39.

The amount of the consideration should be stated in words, and repeated in figures—as, for instance, “three hundred and seventy pounds (£370).”

Where the charge is to two or more jointly, no addition need be made to the form.

Where the money is to be held in separate shares, the following variation may be used:—

After “payment to” insert “C. D., of &c., and E. F., of &c., on the of , 18 , of the respective principal sums of and with interest,” &c., as in the above form.

Any of the following special stipulations may also be added at the end of the charge, and those under the heads A. and B. must be entered in the register.

A.—Stipulations negating the Covenants implied in charges by sections 23 & 24 of the Act of 1875.

- (1.) No covenant is hereby implied to pay the principal or interest secured by the charge.
- (2.) No covenant is hereby implied as to payment of rent or performance or observance of the covenants or conditions of the registered lease, or as to indemnity in respect thereof.

B.—Stipulations in charges excluding the provisions of sections 25 to 27 of the Act of 1875, and altering the priority of charges under section 28 of the same Act.

- (1.) The creditor shall have no power to enter on the land.
- (2.) The creditor shall have no power to enforce foreclosure or sale of the land.
- (3.) The creditor shall have no power of sale.
- (4.) The creditor may exercise the power of sale without notice.
- (5.) This charge shall rank *pari passu* with a charge of even date to of to secure or shall be the [first, second, third, &c., as the case may be] in order of priority of three charges of even date, one of which is to of to secure , another is to of to secure , and the other is this charge, or shall have priority to a charge dated &c., registered &c., in favour of A. B., of &c., for (or otherwise as the case may be).

C.—Miscellaneous Stipulations.

- (1.) The interest secured by the charge shall be reduced to per cent. in every (half-year, quarter, &c.) in which it is paid within days after it becomes due.

These
go on
the
register

These
are not
in the
register
may be
made

FORMS 39, 40. (2.) None of the principal secured by the charge shall be called in till the of 18 unless the interest shall fail to be paid within days after it becomes due.

(3.) None of the principal secured by the charge shall be paid off till the of 18 unless the proprietor of the charge shall be willing to accept it.

(4.) If the interest secured by the charge shall be paid within days after it becomes due the principal shall be payable by instalments of each, to be paid on the of and the of in every year; the first of such instalments to be paid on the of 18.

Provided that on failure of payment of any instalment within days after it becomes due, the whole of the principal remaining owing on the said security shall become payable at once.

Provided nevertheless that the whole or any part (not less than at any one time) of the above-mentioned principal may be paid off on giving one calendar month's notice in writing of the intention to do so, and on paying up all arrears of interest that may be due at the time of such payment of principal.

FORM 40.—Instrument of Charge by way of Annuity.
(Rule 108.)

(Heading as in Form 14.)

(Date.) I, A. B., of &c., hereby charge the land comprised in the title above referred to with the payment to C. D., of &c., of an annuity of for years (or during his life, &c.) payable [half yearly, quarterly] on the of &c., in every year.

(To be executed as Form 14.)

Note.—If there is any consideration, it can be stated at the commencement as "To secure part of the purchase-money of the land comprised in the title above referred to," or "In consideration of an instrument of transfer of even date herewith of the land comprised in the title above referred to," &c., &c.

If only part of the land comprised in the title is charged, add after "land" the words "shown and edged with red in the accompanying plan signed by me, being part of the land," &c.

If the charge is to secure a periodical payment which is not an annuity, the form may be varied accordingly.

FORM 41.—*Charge to secure future Advances. (Rule 108.)* FORMS 41, 42,
43, 44.

As Form 39, adding at the end, "and of every sum hereafter advanced by him with interest at the rate aforesaid, payable on the appointed days, and computed from the time of advancing the same."

FORM 42.—*Application to alter the terms of a Charge under Section 9 (5) of the Act of 1897. (Rule 111.)*

(Heading as in Form 14.)

(*Date.*) We, A. B., of &c. [*registered proprietor of the land*], C. D., of &c. [*registered proprietor of the charge*], and E. F., of &c. [*registered proprietor of a charge of equal or inferior priority prejudicially affected*], hereby apply to the registrar to alter the terms of the charge dated of 18 , registered of 18 , against the title above referred to, as follows:—

(Fill in the proposed alteration.)

(To be executed as Form 14 by all parties.)

FORM 43.—*Discharge of Registered Charge. (Rule 112.)*

(Heading as in Form 14.)

(*Date.*) I, A. B., of &c., hereby admit that the charge dated of 18 , and registered of 18 , of which I am the registered proprietor, has been discharged.

(To be signed by the registered proprietor of the charge, and attested.)

Note.—The discharge may be made as to part of the land only, by adding at the end "as to the land shown and edged with red on the accompanying plan, signed by me, being part of," or as to part of the money only by adding "to the extent of ."

FORM 44.—*Instrument of Transfer of Charge. (Rule 114.)*

(Heading as in Form 14.)

(*Date.*) In consideration of , I, A. B., of &c., hereby transfer to C. D., of &c., the charge dated of 18 , and registered , of 18 , of which I am the registered proprietor.

(To be executed as Form 14.)

Note.—Where the charge is transferred to two or more as tenants in common, words to that effect should be added: *see note* to Form 14.

LAND TRANSFER RULES, 1898.

FORMS 45, 46,
47.

FORM 45.—*Transfer and Discharge.* (Rule 127.)

(Heading as in Form 14.)

(*Date.*) In consideration of pounds (£) paid to A. B., of &c. [*the proprietor of the land*], and of pounds (£) paid to C. D., of &c. [*the proprietor of the charge*], the said A. B. hereby transfers to E. F., of &c., the land comprised in the title above referred to, and the said C. D. hereby discharges the same from the charge dated of 18 , registered of 18 , of which he is the registered proprietor, and from all liability in respect thereof.

(To be executed as Form 14 by A. B. and C. D.)

Note.—Where there are two or more charges to be discharged, the form may be altered as follows:—

After "C. D., of &c.," insert "and pounds (£) paid to E. F. of &c.," (*and so on, as to the proprietors of all the charges to be discharged*), and after "above referred to," continue, "the said C. D. and E. F. hereby respectively discharge the same from the charges dated of 18 , and of 18 , (*and so on as to all the charges to be discharged*) registered of 18 , and of 18 , (*and so on*) of which they are the respective proprietors, and from all liability in respect thereof."

FORM 46.—*Instrument of Assent to a Devise of Land under section 3 of the Act of 1897.* (Rule 130.)

(Heading as in Form 14.)

(*Date.*) I, A. B., of &c., as personal representative of the late C. D., of &c., hereby assent to the devise contained in the will of the said C. D. to E. F. of the land comprised in the title above referred to.

(To be signed by A. B. and attested.)

Note.—If the assent is to be subject to a charge for payment of money which the personal representative is liable to pay, or if the land devised is part only of the land comprised in the title referred to, the form may be varied accordingly.

FORM 47.—*Instrument of Appropriation of Land in satisfaction of a Legacy or Share in Residuary Estate under section 4 of the Act of 1897.* (Rule 130.)

(Heading and commencement as in last Form down to "hereby.")

With the consent of E. F., of &c., who is entitled to a legacy (*or share in residuary estate*) under the will of the said C. D., appropriate to the said E. F. the land comprised

in the title above referred to, and certify that all proper notices under the 4th section of the Land Transfer Act, 1897, have been given, and the requirements of the Rules of Court under the Land Transfer Acts have been duly complied with. FORMS 47, 48,
49, 50.
—

(To be signed by A. B. and E. F. and attested.)

Note.—If the land appropriated is part only of the land comprised in the title referred to, the form may be varied accordingly.

FORM 48.—*Notice of divesting of the estate of the Official Receiver or of a Trustee in Bankruptcy. (Rule 144.)*

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

District——

Parish——

No. of Title——

[No. of (or other reference to) Charge——.]

(*Date.*) I (A. B., of &c.), the official receiver (or trustee in the bankruptcy of C. D.), hereby give notice that by reason of [*describe the act, omission, or order by reason of which the estate is divested*], my estate and interest in the land (*or charge*) above referred to has been divested, and I hereby apply for entry of this notice on the register according to Rule 144.

(To be signed by the official receiver or trustee.)

FORM 49.—*Application to enter Notice of an Estate in Dower or by the Curtesy. (Rule 170.)*

(Heading as in Form 14.)

I, A. B., of &c., being entitled to an estate in dower (*or by the curtesy*) in the land comprised in the title above referred to, by reason of [*state concisely the facts on which the claim depends*], hereby apply for registration of notice thereof.

(To be signed by the applicant and her (*or his*) solicitor.)

Note.—The application should be accompanied by evidence of the facts on which the claim depends.

FORM 50.—*Notice of Liability to Death Duty. (Rule 171.)*

The land is liable to such death duties as may be payable or arise by reason of the death of A. B., of &c., who died on the of , 18 , (*or by reason of a settlement created by deed dated, &c., or by reason of the determination of a lease dated, &c., or as the case may be*).

FORMS 51, 52,
53, 54.

FORM 51.—*Certificate of Non-liability to Death Duty.*
(Rule 173.)

This is to certify that the land comprised in the title No. may be registered without notice of any liability to death duty by reason of the death of A. B., of &c., and that any such notice already registered may be cancelled.

Dated the day of 18 .

Note.—If the certificate is to apply to part only of the land comprised in the title, the words “shown and edged with red on the accompanying map, being part of the land,” should be inserted after the word “land.”

FORM 52.—*Entry restraining a Disposition by a sole-surviving Proprietor.* (Rule 185.)

(*Date.*) When the number of joint proprietors has been reduced to one, no registered disposition of the land [or charge] shall be made except under an order of the registrar, after an enquiry into title, or an order of the Court.

FORM 53.—*Caution (under the 53rd section of the Act of 1875) against Dealings with Registered Land or a Charge.* (Rule 188.)

(Heading as in Form 48.)

(*Date.*) A. B., of &c., requires that no dealing with the land (or charge) above referred to (or with the land shown and edged with red on the plan attached hereto) shall be had on the part of the registered proprietor until notice has been served upon him.

(To be signed by the person lodging the caution, or his solicitor.)

Note.—If the address given is not within the United Kingdom, an address for service within it must also be given.

FORM 54.—*Caution against the Registration of a possessory or qualified Title, as qualified or absolute.* (Rule 188.)

(Heading as in Form 48.)

(*Date.*) A. B., of &c., requires that no application to register the land above referred to with a qualified or absolute title shall be proceeded with until notice has been served upon him.

(*See the notes to the preceding Form.*)

FORM 55.—*Notice to a person who has lodged a Caution.*
(Rule 190.)

FORMS 55, 56,
57, 58.

(Heading as in Form 48.)

Notice.—The caution lodged by you in this office on the day of 18 , requiring that no dealing with the land (or charge) above referred to should be had on the part of the registered proprietor until notice had been served upon you, will cease to have any effect after the expiration of 14 days next ensuing the date at which this notice is served, unless an order to the contrary is made by the registrar.

Dated the day of 18 .

FORM 56.—*Application to withdraw a Caution.* (Rule 192.)
(Heading as in Form 48.)

(*Date.*) I, A. B., of &c. [*the person who lodged the caution*], hereby apply to withdraw the caution lodged in my name on the of 18 , against the title [*or charge*] above referred to.

(To be signed by the applicant or his solicitor.)

FORM 57.—*Application to register a Restriction under section 58 of the Act of 1875, as amended by the Act of 1897.*
(Rule 196.)

(Heading as in Form 48.)

(*Date.*) A. B., of &c., hereby applies to the registrar to enter the following restriction against the title (or charge) above referred to.

Restriction.—Until further order no entry affecting the land comprised in the title (or the charge) above referred to shall be made without the consent of A. B., of &c. (or otherwise—see examples in Forms 6 to 10).

(To be signed by A. B. or his solicitor.)

FORM 58.—*Application to withdraw or modify a Restriction.*
(Rule 196.)

(Heading as in Form 48.)

(*Date.*) A. B., of &c., hereby applies to the registrar to modify (or withdraw) the restriction registered on the of 18 , against the title (or charge) above referred to, as follows:—(*Fill in the proposed modification, or, in case of withdrawal, omit the words "as follows."*)

(To be signed by the applicant (or his solicitor) and all other persons interested (or their respective solicitors); and attested.)

LAND TRANSFER RULES, 1898.

Forms 59, 60,
61.

FORM 59.—*Inhibition where the Incumbent of a Benefice is the registered Proprietor of land. (Rule 197.)*

No disposition of the land shall be registered except on production of a certificate from Queen Anne's Bounty, the Board of Agriculture, or the Ecclesiastical Commissioners, in accordance with section 15 of the Land Transfer Act, 1897.

No lien shall be created by deposit of the land certificate.

FORM 60.—*Certificate under section 15 of the Act of 1897 as to a Disposition by the Incumbent of a Benefice. (Rule 199.)*

(To be endorsed on the instrument presented for registration.)

(*Date.*) This is to certify that the within-written (transfer, charge, &c.) is made under the provisions of [*state the statute or other authority under which it is made*] and is authorized thereby, and may be registered.

(To be sealed by Queen Anne's Bounty, or the Ecclesiastical Commissioners, as the case may be.)

FORM 61.—*Land Certificate. (Rule 204.)*

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

LAND



CERTIFICATE.

This is to certify that A. B., of &c., is registered as the proprietor with an absolute [qualified or possessory] title of the freehold (or leasehold) land known as , comprised in the title No. in the parish [or extra parochial place] of , in the district of , and county of .

Copies of the entries in the register, and of the filed plan of the land are annexed hereto.

Dated the day of 18 .

(Land Registry Seal.)

(Here follow copies of the entries in the register and a copy of the filed plan.)

Note.—The description of the property to which the Certificate relates must be adapted to that by which it is described in the register. When the registration is of a possessory title only, the certificate is to contain the following notice: "The possessory title hereby certified does not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title hereby certified, which was subsisting or capable of arising on the day of , being the date of first registration."

FORM 62.—*Certificate of Charge.* (Rule 204.)FORMS 62, 63,
64.

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

CERTIFICATE



OF CHARGE.

This is to certify that A. B., of &c., is registered as the proprietor of the charge No. , for pounds (£), secured on the freehold [*or leasehold*] land known as [being part of the land] comprised in the title No. , in the parish [*or extra parochial place*] of in the district of , and county of

Copies of the charge and of the entries in the register relating to that title and of the filed plan of the land comprised in the charge are annexed hereto.

Dated the day of 18 .

(Land Registry Seal.)

(Here follow copies of the charge, and of the entries in the register and of the filed plan referred to.)

Note.—When the registrar is satisfied that any particular entry in the register does not affect the land comprised in the charge, he may direct its omission from the certificate of charge.

FORM 63.—*Official Certificate of result of Search.* (Rule 224.)

District . Parish . No. of Title .

[Reference to charge or incumbrance .]

(*Date.*) In reply to an application, dated, &c., made by A. B., of &c., requiring a search to be made, whether [*&c., stating the effect of the application*], it is hereby certified that the search has been diligently made, with the following result:—

(Fill in result of search.)

FORM 64.—*Summons on application to the Court.* (Rule 237.)

In the LAND REGISTRY.

Title No. .

Mr. Justice

Between A. B., Plaintiff, and C. D., Defendant.

Let all parties concerned attend the Judge in Chambers (Court No. , Royal Courts of Justice, Strand, London)

LAND TRANSFER RULES, 1898.

Forms 64, 55, on the day named in the margin of this Summons, on the
 66. hearing of an application on the part of A. B., of &c. (the
 above-named Plaintiff), for the decision of the Court upon
 the question [or questions] referred to in the Statement, a
 copy of which is set forth in the Schedule, or annexed to this
 Summons.

Dated the day of 189 .

This Summons was taken out by , of , Solicitor
 for the Plaintiff [or by the Plaintiff in person].

To

(The Schedule above referred to.)

Note.—This Schedule will be a copy of the Statement settled
 and signed by the registrar under Rule 235.

FORM 65.—*Certificate of Value.* (Rule 265.)

(Heading as in Form 1.)

I, A. B., of &c., am well acquainted with the land which is
 the subject of the (*describe the instrument or application which
 is being made*), and I certify that to the best of my judgment,
 knowledge, and belief, the present capital value thereof,
 together with all buildings and improvements, and timber
 (*if any*) does not exceed £ .

Dated the day of 18 .

FORM 66.—*Certificate of Examination of a Married Woman.*

(Rule 275.)

(Heading as in Form 1.)

This is to certify that on the day of 18 , before
 me, A. B., a perpetual Commissioner appointed for the county
 of for taking the acknowledgments of deeds by married
 women pursuant to the Fines and Recoveries Act, 1833,
 appeared personally C. D., the wife of E. D., of &c., and
 produced a paper writing, marked , bearing date the
 day of , 18 , and identified by my signature.
 And I do hereby certify that the said C. D. was, at the time
 of her producing the same paper writing, of full age and
 competent understanding, and that she was examined by me
 apart from her husband, touching her knowledge of the
 contents of the said paper writing, and of the nature and
 effect of the application [*disposition, or other act, as the case
 may be*] therein mentioned, and that I ascertained she was
 acting with respect thereto freely and voluntarily, and assented

to the same after full explanation of her rights and of the **FORMS 66, 67.**
effect of the proposed application [*disposition, or other act, as* —
the case may be].

Dated this day of 18 .

(To be signed by the Commissioner.)

**FORM 67.—Statutory Declaration verifying a Certificate of
Examination of a Married Woman. (Rule 275.)**

(Heading as in Form 1.)

I, A. B., of &c., solemnly and sincerely declare as follows:—

I know C. D., the wife of E. D., in the certificate hereunto
annexed mentioned, and that the said certificate was signed
by F. G., of &c. [*Commissioner*] in the said certificate men-
tioned, at &c., in my presence.

To the best of my knowledge and belief, the said F. G. is
not in any manner interested in the transaction giving occasion
for such examination, or concerned therein as attorney, solicitor,
or agent, or as clerk to any attorney, solicitor, or agent so
interested or concerned.

And I make, &c.

THE SECOND SCHEDULE.

SOLICITOR'S REMUNERATION. (Rule 271.)

PART I.

***Scale of Charges for First Registration with Absolute or
Qualified Title.***

For the first 1,000*l.* in value, 30*s.* per 100*l.*

For the second and third 1,000*l.*, 20*s.* per 100*l.*

For the fourth and each subsequent 1,000*l.* up to 10,000*l.*,
10*s.* per 100*l.*

And for each subsequent 1,000*l.* up to 100,000*l.*, 5*s.* per 100*l.*

A minimum charge of 3*l.* is to be made where the value is
under 100*l.*, and a minimum charge of 5*l.* where the value is
100*l.* or over.

Fractions of 100*l.* under 50*l.* are to be reckoned as 50*l.*

Fractions of 100*l.* above 50*l.* are to be reckoned as 100*l.*

Where the value exceeds 100,000*l.*, the charge is to be as
on 100,000*l.*

LAND TRANSFER RULES, 1898.

SOLICITOR'S
REMUNERA-
TION.

PART II.

Scale of Charges for (1) First Registration with Possessory Title and (2) Transfers, Charges, Exchanges, and Partitions of Registered Land or a Registered Charge.

Value of Land or Amount of Charge.	Scale of Charges.
Not exceeding 1,000 <i>l.</i>	10 <i>s.</i> 6 <i>d.</i> for every 100 <i>l.</i> or part of 100 <i>l.</i>
Exceeding 1,000 <i>l.</i> and not exceeding 20,000 <i>l.</i>	5 <i>l.</i> 5 <i>s.</i> for the first 1,000 <i>l.</i> and 1 <i>l.</i> 1 <i>s.</i> for every subsequent 2,000 <i>l.</i> or part of 2,000 <i>l.</i>
Exceeding 20,000 <i>l.</i> and not exceeding 40,000 <i>l.</i>	15 <i>l.</i> 15 <i>s.</i> for the first 20,000 <i>l.</i> and 1 <i>l.</i> 1 <i>s.</i> for every subsequent 4,000 <i>l.</i> or part of 4,000 <i>l.</i>
Exceeding 40,000 <i>l.</i>	21 <i>l.</i> for the first 40,000 <i>l.</i> and 1 <i>l.</i> 1 <i>s.</i> for every subsequent 10,000 <i>l.</i> or part of 10,000 <i>l.</i> up to a maximum of 26 <i>l.</i> 5 <i>s.</i>

CHAPTER V.

Section I.

ORDERS IN COUNCIL.

AT THE COURT AT WINDSOR, the 18th day of July, 1898.

Present :

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL. *First Order in Council.*

Pursuant to the 20th section of the Land Transfer Act, 1897, Her Majesty, by and with the advice of Her Most Honourable Privy Council, is pleased to order and declare, and it is hereby ordered and declared, with respect to the County of London, as follows :—

Registration of Title to Land is to be compulsory on sale in the several portions of the county mentioned in the first column of the Schedule hereto, on and after the respective days mentioned in the second column of the same Schedule.

Registration of title to be compulsory in the County of London in the areas mentioned from the dates mentioned.

In this Order "parish" means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed, and the boundaries of each such parish shall be those constituted and limited at the date of this Order.

Definition of "parish."

This Order may be amended or added to or repealed by Order in Council.

ORDERS IN COUNCIL.

FIRST ORDER
IN COUNCIL.

THE SCHEDULE.

PORTIONS OF THE COUNTY.

The parishes of Hampstead, Saint Pancras,
Saint Marylebone, and Saint George's,
Hanover Square - - - - - 1st November, 1898.

The parishes of Shoreditch, Bethnal Green,
Mile End Old Town, Wapping, Saint
George's-in-the-East, Shadwell, Ratchiff,
Limehouse, Bow, Bromley, and Poplar - 1st March, 1899.

The remainder of the county (not including
the City of London) north of the centre
line of the River Thames, except North
Woolwich - - - - - 1st October, 1899.

The remainder of the county, not including
the City of London - - - - - 1st January, 1900.

The City of London - - - - - 1st July, 1900.

AT THE COURT AT BALMORAL, the 20th day of October,
1898.

Present :

*Second Order
in Council.*

Postponement
of operation
of former
Order till
1st January,
1899.

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

Whereas it is expedient that the operation of the Order in Council, dated the 18th of July, 1898, and made pursuant to the Land Transfer Act, 1897, should be postponed. Now it is hereby ordered and declared that the said Order is to be read and to take effect as if, instead of the words "first of November, 1898," the words "first of January, 1899," had been inserted in the Schedule thereto.

Section II.

FEE ORDER.

FEE ORDER, 1898.

ORDER AS TO FEES.

Note.—The following fees must be considered in connection with the Rules hereinafter contained.

(A.) For entry of first proprietorship of land with a possessory title; for registration of charges, and transfers of land and charges, for valuable consideration; and for removal of land from the register:—

Value of Land or Amount of Charge.	Fee.
Not exceeding 1,000 <i>l.</i> - -	1 <i>s.</i> 6 <i>d.</i> for every 25 <i>l.</i> or part of 25 <i>l.</i>
Exceeding 1,000 <i>l.</i> and not exceeding 3,000 <i>l.</i>	3 <i>l.</i> for the first 1,000 <i>l.</i> , and 1 <i>s.</i> for every 25 <i>l.</i> or part of 25 <i>l.</i> over 1,000 <i>l.</i>
Exceeding 3,000 <i>l.</i> and not exceeding 10,000 <i>l.</i>	7 <i>l.</i> for the first 3,000 <i>l.</i> , and 1 <i>s.</i> for every 50 <i>l.</i> or part of 50 <i>l.</i> over 3,000 <i>l.</i>
Exceeding 10,000 <i>l.</i> - - -	14 <i>l.</i> for the first 10,000 <i>l.</i> , and 1 <i>s.</i> for every 100 <i>l.</i> or part of 100 <i>l.</i> over 10,000 <i>l.</i> , up to a maximum of 25 <i>l.</i> for 32,000 <i>l.</i>

(B.) For registration of transmissions, and of transfers not for value (including exchanges), notices of leases, rectifications of the register under the 95th section of the Act of 1875, and entries and correction under Rules 97 and 117:—

One-quarter of the above fees, according to the capital value of the interest dealt with, with a minimum of 1*s.* and a maximum of 5*l.*

(C.) For entry of first proprietorship of leasehold land on the occasion of the original grant of the lease; for

FEE ORDER. entry of first proprietorship of freehold land with a possessory title on the occasion of a grant, wholly or partly in consideration of a rent; and for registration of the transferee on a transfer of freehold land on a like occasion:—

- (a.) In respect of the average rent 2s. for every 10l. a year, and
- (b.) In respect of the premium (if any) the same fee on its amount as above prescribed for a transfer for value of land.

Provided that no greater fee than 10l. be paid in any case.

(D.) For entry of first proprietorship of land with an absolute or qualified title:—

Three times the fee prescribed for registration of a possessory title, with a minimum fee of 3l.

(E.) For registration of the proprietorship of an incumbrance, prior to registration, and of a transfer or transmission thereof:—

The same fee as for registration of a charge or of a transfer or transmission thereof respectively.

(F.) For a land certificate, or certificate of charge, except where required by the Acts or Rules to be issued free of charge:—

	£	s.	d.
Where the value of the land or charge does not exceed 200l.	0	10	0
Exceeds 200l., but does not exceed 1,000l.	1	0	0
„ 1,000l.	2	0	0

(G.) For altering a land certificate to correspond with the register, except where such alteration is required by the Acts, or Rules, to be made free of charge:—

Half the fee for a certificate.

	£	s.	d.
(H.) For registering an inhibition	1	0	0
For annexing conditions to land	1	0	0

ORDER AS TO FEES.

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	£	s.	d.	FEES ORDER.
For entering notice of an estate in dower or by the curtesy	1	0	0	
For preparing or settling a statement for the Court	1	0	0	
For registering a caution or restriction	0	10	0	
For alteration or withdrawal of an inhibition	0	10	0	
For discharging or altering conditions	0	10	0	
For entering a note or notice under the 18th section of the Act of 1875	0	10	0	
For an entry negating or altering implied covenants, powers, priorities, &c.	0	10	0	
For examination of a married woman by an officer of the registry	0	10	0	
For comparison of abstracts with deeds, by officers of the registry—per hour	0	10	0	
For entering an additional address for service	0	10	0	
For inspection of the register after removal of land				
(a) if within one year of the removal	0	5	0	
(b) after one year from the removal	0	10	0	
For a certificate of result of official search—per title	0	5	0	
For alteration or withdrawal of a caution or restriction	0	5	0	
For a summons	0	5	0	
For inspection of any document not referred to on the register	0	5	0	
For any entry on the register, for which no other fee is provided	0	5	0	
For noting the determination of a lease, or of an estate in dower, or by the curtesy	0	2	6	
For taking an affidavit or declaration	0	1	6	
For each exhibit thereto	0	1	0	
For entering notice of a mortgage by deposit of certificate	0	1	0	
For every notice under the registry stamp	0	1	0	
For office copies—per folio	0	0	3	
For copies of plans—Such charges, according to time and labour employed, as the registrar shall from time to time authorize.				

FEE ORDER
(Rules).

RULES.

1. The above fees include, in the matters to which they relate, all necessary stationery and mapping done in the registry: the preparation, issue, endorsement, and deposit of certificates wherever such issue, endorsement, or deposit is obligatory; discharges of incumbrances; the filing of auxiliary documents (if any); and all other necessary costs of and incidental to the completion of each registration or transaction. They also include, in districts where registration of title is compulsory, any surveying that may be necessary to enable the land to be identified on the ordnance map.

2. Where an application for first registration with absolute title is completed with a qualified title only, such abatement (if any) in the fee may be made as the registrar may deem reasonable, under the circumstances of the case.

3. The fees payable in respect of any matter involving an inquiry into title are exclusive of the fees of conveyancing counsel, and of any costs or expenses incurred by the registry in regard to the matter.

4. Where land, already registered with a possessory title, is to be registered with a qualified or an absolute title; or where land, already registered with a qualified title, is to be registered with an absolute title, the registrar may make such abatement (if any) in the fee as he shall deem reasonable.

5. The fee for an entry in, or withdrawal from the register affecting several titles whereof the same person is registered as proprietor, shall be the same as for an application respecting one title only. In other cases an extra fee of 2s. 6d. shall be charged for every title affected after the first.

6. Where a transfer for value and a charge are registered together only half the fee shall be paid in respect of the charge.

7. Where an application is made by post, the fee may be paid by banker's draft, or by postal or post office order, or in Bank of England notes.

8. The fee for the first registration of leasehold land shall include the entry of a notice of the lease against the lessor's title, if registered.

FEE ORDER
(Rules).

9. When a transfer of freehold land in consideration of a rent, or a transfer by which mines and minerals are dealt with separately, is registered, the fee shall not include the registration of the proprietor of the rent, or of the severed land or mines and minerals respectively, as the case may be, for which a separate fee shall be payable as on a transfer of land.

10. The fee payable for registration of proprietorship of an incumbrance, if made on the first registration of land, shall be reduced to one quarter of the fee above prescribed.

11. The fee for every entry of, and in respect of, a caution, inhibition or restriction, condition, note or notice of any kind, shall not be payable when such entry is made on the first registration of land, or on any registration for which an *ad valorem* fee is payable.

12. The amount of an average rent for the purposes of these fees shall be ascertained in the same manner as for the purposes of Inland Revenue Stamp Duty.

13. Where a charge or incumbrance is also secured on unregistered land as well as on registered land, an abatement in the fee shall be made, proportional to the value of unregistered land as compared with the value of the whole security.

14. The word "land" includes both freehold and leasehold land, and every hereditament the title to which may be registered under the Land Transfer Acts.

15. When boundaries are to be noted on the register as accurately defined, such additional charges may be made for mapping and surveying as the registrar shall in each case direct.

16. Where land is transferred subject to charges or incumbrances, no deduction from the value of the land is to be made in respect thereof, except where the transfer is to a mortgagee, in which case the value of the equity of redemption shall be taken to be the value of the land.

RULES UNDER SMALL HOLDINGS ACT, 1892.

Section III.

RULES UNDER SMALL HOLDINGS ACT, 1892.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS
Act, 1892.

I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain; with the advice and assistance of Robert Hallett Holt, Barrister-at-Law, Registrar of the Land Registry, by virtue and in pursuance of the Land Transfer Act, 1875, and of the Small Holdings Act, 1892, and of all other powers and authorities enabling in that behalf, do make the following Rules for the purpose of carrying the said Acts into execution.

Dated this 9th day of August, 1892.

HALSBURY, C.

ROBERT HALLETT HOLT.

RULES UNDER SECTION 10 OF THE SMALL
HOLDINGS ACT, 1892.

PRELIMINARY.

Interpreta-
tion.

1. In these Rules the Small Holdings Act, 1892, is referred to as the Act.

PART I.

*Registration of
Land on acqui-
sition by a
County
Council.*

REGISTRATION OF LAND ON ACQUISITION BY A
COUNTY COUNCIL.

I.—Generally.

Application
by County
Council for
first registra-
tion with
absolute title.

2. Application by a County Council for registration as proprietor, with absolute title of land acquired in pursuance of the Act, shall be made in Form 1, or to the like effect, and shall be signed by the clerk or the solicitor to,

or some other responsible officer of, the Council, and shall be accompanied by a map of the land (prepared according to Rule 6 of the Land Registry Rules, 1889), the conveyance to the Council, and a statutory declaration by the solicitor of the Council, or such other solicitor as may have been employed by them in the purchase, in Form 2, or to the like effect.

REGISTRATION
OF LAND ON
ACQUISITION
BY A COUNTY
COUNCIL.
—

3. If the Council have purchased in consideration of a fee farm or other rent secured by a condition of re-entry or otherwise, whether under section 13 of the Act, or under section 10 of the Lands Clauses Consolidation Act, 1845, or if the land is subject to any incumbrance, or if it be known that the mines and minerals are excepted, the fact shall be stated and short particulars given in the statutory declaration aforesaid.

Purchase in
consideration
of rentcharge
or subject to
incum-
brances.

4. On receipt of the application the aforesaid statutory declaration shall be filed and referred to on the register, and the registrar shall register the County Council as proprietors of the land for the purposes of the Act, with an absolute title, if satisfied that they have a good holding title, or, if not so satisfied, he shall register the County Council provisionally pending further investigation, with such other title as is authorised by the Land Transfer Act, 1875 ; and in the latter case the purchasers from the County Council shall, pending the completion of the absolute registration, have the benefit of the title possessed by the County Council at the time of their provisional registration, and on the registration of such purchasers a note shall be made on the register accordingly.

Registration
of County
Council pend-
ing investiga-
tion of title.

5. The completion of the registration with absolute title shall be proceeded with or may be allowed to stand over for such period and subject to such conditions as the registrar shall direct.

Completion of
registration.

6. At any time before the actual registration of the title as absolute any person may lodge a caution against such absolute registration being made, similar to and with the like effect as a caution against entry of land on the register.

Caution
against com-
pletion of
registration.

**REGISTRATION
OF LAND ON
ACQUISITION
BY A COUNTY
COUNCIL.**

Title may be registered as absolute after advertisement.

Sale pending completion of registration.

7. The title of the County Council may be registered as absolute at such time after the appearance of the advertisement of the application as the registrar shall think fit.

8. In the event of any sale of a small holding by the County Council, being either a part or the whole of the land comprised in a title, during the period between the provisional registration and the completion of registration, with an absolute title, the County Council shall, nevertheless, proceed to complete the registration with absolute title of the whole of the land comprised in the provisional registration, and upon such completion the purchaser of the small holdings shall be registered as proprietor with an absolute title of the purchased land.

Investigation of Title under Conveyancing Counsel outside the Office.

Power for County Council to apply for reference to a conveyancing counsel.

II.—Investigation of Title under Conveyancing Counsel outside the Office.

9. If at any time, either before or after the purchase of land, and either before or after the leaving of a formal application for registration, the County Council desire to have the title investigated through the registry with a view to registration with absolute title, they may apply to the registrar for a reference of the title to any land they have purchased, or are about to purchase, to a conveyancing counsel, and the registrar shall, if he think proper, refer them to such conveyancing counsel (of not less than 10 years' standing) as he shall think fit.

Conveyancing counsel to whom reference directed to investigate title and settle conveyance.

10. The title shall be investigated by such counsel, and the conveyance (if not already settled) shall be settled by him under the instructions of the County Council, and shall describe the property by reference to the ordnance map.

Report by conveyancing counsel.

11. If the application for registration by the County Council is made after the execution of the conveyance, they shall leave with the application a report on their title signed by the conveyancing counsel by whom the investigation was made.

12. Such report shall state whether or not the title of the County Council appears to be a good holding title, and whether or not there are any qualifications, incumbrances, conditions, exceptions or other matters affecting it, which ought to be entered on the register, and, if any, the details thereof.

INVESTIGATION
OF TITLE
UNDER CON-
VEYANCING
COUNSEL
OUTSIDE THE
OFFICE.

Contents of
report.

13. The registrar may act on such report, and may register the title as absolute or qualified accordingly, but if it appear to the registrar that the title, though open to objection, is one the holding under which will not be disturbed, he may register the same as absolute or otherwise proceed under the 17th section of the Land Transfer Act, 1875.

Registrar may
act on report.

14. Where the title has already been investigated by any such conveyancing counsel as aforesaid, the County Council may request that the reference be made to such counsel if the registrar so think fit.

Reference to
particular
conveyancing
counsel.

15. Where the sale has been completed without the opinion of such conveyancing counsel as aforesaid being taken, the title may be referred and proceeded with in the same manner as above prescribed, as soon as the application for registration is left in the office.

Reference
after comple-
tion of sale.

PART II.

REGISTRATION OF SALES BY COUNTY COUNCIL FOR SMALL HOLDINGS.

*Registration of
Sales by County
Council for
Small
Holdings.*

16. On a sale of a small holding by the County Council, the instrument of transfer shall be in Form 3.

Form of
transfer.

17. Where the whole of the purchase money is not paid on completion, the purchaser shall execute a charge in Form 4, 5 or 6, with such additions and modification as the circumstances may require.

Purchase-
money re-
maining on
mortgage.

18. Such charge, so executed, shall be entered on the register, and shall (subject to the provisions of the Act)

Charge to be
entered on
register.

REGISTRATION
OF SALES BY
COUNTY
COUNCIL
FOR SMALL
HOLDINGS.

Entry on
register.

Modification
of entry on
register.

Cost of
certificate.

operate in all respects as a charge made by a registered proprietor of the land, and may be dealt with on the register accordingly.

19. An entry shall be made on the register to the effect that the land was originally acquired under the Act, giving also the date of the sale by the County Council, and showing that the land is subject generally to such of the restrictions and conditions imposed by the Act as may for the time being be subsisting.

20. Such entry may be modified or removed with the consent of the County Council, and on production of a certificate signed by the clerk or solicitor, or other responsible officer of the said Council, to the effect that the land is no longer subject to the conditions contained in Section 9 of the Act, or that the requirements of Section 11 of the Act have been complied with respectively.

21. The cost of the land certificate to be issued to the purchaser from the County Council shall, for the purposes of Section 6, Sub-section (1) of the Act, be included in the costs of registration of title.

PART III.

*Sales by or
with the Con-
sent of the
County
Council.*

Transfer of
small holding.

Purchase-
money re-
maining on
mortgage.

Entry of
transferee on
register.

SALES BY OR WITH THE CONSENT OF THE COUNTY COUNCIL UNDER SECTION 9 OF THE ACT.

22. On any sale made by the County Council under Section 9 of the Act, the County Council shall have power to transfer the land, and the instrument of transfer shall be in Form 7 or to the like effect.

23. The provisions hereinbefore contained as to the creation of incumbrances by the first purchaser of a small holding shall apply to any such sale.

24. The transferee shall be registered as proprietor, and suitable entries and cancellations shall be made on the register according to the terms of the transfer, and no

evidence shall be required by the registrar as to the happening of any of the events mentioned in the said section 9 as giving rise to the powers of the County Council, or the fulfilment of any of the provisions in that section contained.

SALES BY OR
WITH CONSENT
OF COUNTY
COUNCIL.

PART IV.

PROCEEDINGS ON THE DEATH OF THE PROPRIETOR OF A SMALL HOLDING.

*Proceedings on
the Death of
the Proprietor
of a Small
Holding.*

25. On the death of the sole proprietor, or of the survivor of several joint registered proprietors of a small holding, the registrar may enter the executor or administrator (if any) as proprietor in the place of the deceased proprietor without regard to the beneficial title.

Executor to
be registered
on death of
proprietor.

26. The application for such registration shall be in Form 8.

Form of
application.

27. In the exercise of his power as registered proprietor of the land, such executor or administrator shall be a trustee for all persons beneficially interested, and (except for purposes of registered dealings for value with the land) the registration of the executor or administrator shall not affect the beneficial ownership of the land.

Executor to
be a trustee.

28. Production of the probate or letters of administration shall be sufficient proof of the death of the proprietor and of the execution and validity of the will, or the fact of the intestacy.

Proof of title.

29. A statutory declaration of identity in Form 9 or to the like effect shall be the only additional evidence required.

Statutory
declaration as
additional
evidence.

30. Where the will is not proved, or no administration is taken out, the registrar shall proceed as prescribed by section 41 of the Land Transfer Act, 1875.

Procedure
where no
probate.

**LOCAL
OFFICERS.**

PART V.

LOCAL OFFICERS.

**Appointment
of local
registrars.**

31. The registrar may, on the application of the County Council, appoint suitable persons as local registrars for the purposes of section 10 of the Act.

**Qualification
of local
registrars.**

32. Every person so appointed shall be either a barrister or a solicitor, or an officer of the County Council, or a district registrar of the High Court, or a registrar of the County Court, or a registrar of an existing local deed registry.

**Duties of local
registrars.**

33. The local registrar shall supply information to the owners of small holdings and other persons in regard to all matters connected with registration and transfer of land under the Act, and shall give all necessary assistance in the preparation of instruments for registration and transfer under the Act.

**Remunera-
tion.**

34. The remuneration of the local registrar shall be provided by the County Council, and shall be regulated in such manner as they shall determine.

**Contribution
to remunera-
tion.**

35. A reasonable contribution to the remuneration of the local registrar may, for the purposes of Section 6, Sub-section (1) of the Act, be included in the cost of registration of title.

**Removal
of local
registrars.**

36. The persons appointed as hereinbefore mentioned may be removed by the registrar at any time for incompetence or failure to perform their duties in a satisfactory manner, or (on the application of the County Council) on the ground that the amount of business is insufficient to require such local assistance.

PART VI.

MISCELLANEOUS.

Miscellaneous.

**Modifications
as to land
already
registered.**

37. Where the land purchased by the County Council is already registered with an indefeasible title under the

Land Registry Act, 1862, or with an absolute title under the Land Transfer Act, 1875, the proceedings under these Rules shall be modified in such manner as the registrar may deem convenient.

MISCELLANEOUS.

38. Every instrument of transfer or charge duly executed relating to a small holding shall (so far as consistent with the Act) take effect as a conveyance or mortgage by deed, and the provisions of the Conveyancing Act, 1881, shall take effect accordingly, except as varied or negatived in the instrument or by these Rules.

Provisions of C. A., 1881, to apply.

39. So long as land is registered as subject to the Act, no transfer (including a transfer by the registered proprietor of a charge) or charge shall be registered without the consent of the County Council, testified by their concurring in the execution thereof.

Dispositions to be with consent of County Council.

40. On any sale by the registered proprietor of a charge, the instrument of transfer shall be deemed to have been made in professed exercise of the power of sale (if any) implied in the charge.

Sale by chargee.

41. On any transfer for value of land, made by the registered proprietor of a registered charge or incumbrance conferring a power of sale, it shall be assumed that the transfer is made in exercise of the power, and that the land transferred is sold free from the charge, and from all charges registered subsequently thereto.

Transfer to be free from subsequent charges on sale by chargee.

42. No purchaser of land, provisionally registered under these Rules, or registered with an absolute title, shall (in the absence of express stipulation to the contrary) require any further title beyond that to be obtained by an inspection of the register, or a certified extract from, or copy of the register (to be furnished at his expense), and a statutory declaration (at the like expense) as to the existence or otherwise of matters which are declared by section 18 of the Land Transfer Act, 1875, not to be incumbrances within the meaning of that Act.

Evidence of title required by purchaser.

43. In applying the 3rd and 6th sub-sections of section 83 of the Land Transfer Act of 1875 to small

Powers of Court given to registrar.

MISCELLANEOUS.

- holdings, the word "registrar" shall be substituted for the word "Court."
- Registration of land in mortgage to County Council. 44. Any land on which a County Council has advanced money under section 19 of the Act may, with the consent of the County Council, be registered, provisionally or otherwise, in like manner and with the like effect as heretofore provided with respect to land originally acquired by the County Council for the purposes of the Act.
- Sale or exchange. 45. Where land is sold or exchanged by the County Council under section 15 of the Act, the instrument of transfer shall contain additions in Form 10 or to the like effect.
- Registration of transfer. 46. On receipt of such transfer, the registrar shall register the transferee without further enquiry as to the fulfilment of the provisions of the said section, and shall cancel all references to the Act that may have been entered on the register and that no longer affect the land.
- Application of existing Rules. 47. Except as varied by these Rules, the existing Rules made under the Land Transfer Act, 1875, shall apply to small holdings.
- Citation of Rules. 48. These Rules may be cited as The Land Registry (Small Holdings) Rules, 1892, and shall commence on the 1st of October, 1892.

Schedule of Forms.

SCHEDULE OF FORMS.

Form 1.

Application by a County Council for First Registration as Proprietors of Land.

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.
No. of Title.

The County Council of ——— apply to be registered as proprietors with Absolute Title of the land shewn and edged with red on the accompanying map marked ———, which land is

SCHEDULE OF FORMS.

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also comprised in the accompanying Conveyance marked——— and is also referred to in the accompanying statutory declaration marked ——.

SCHEDULE OF
FORMS.
—

Dated the —— of —— 189 .

(Signature of the Clerk, Solicitor, &c.,
to the Council.)

The address for service of the said Council is at ——.

Form 2.

Statutory Declaration to accompany application in Form 1.

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.

No. of Title.

In the matter of the application of the County Council of ——.

I, —— of ——, Solicitor, do solemnly and sincerely declare as follows:—

I acted for the above-named Council in the purchase of the land shewn and edged with red on the map marked —— now produced and shewn to me. As such Solicitor I examined the Vendor's title in manner following [*here state particulars of examination, length of title shewn, name of Counsel (if any) employed, special conditions (if any), comparison of abstract, name and address of Vendor and Vendor's Solicitor, &c., &c.*].

The investigation so made was, in my opinion, as full an investigation of the Vendor's title as was reasonably possible and suitable under the circumstances of the case.

I (or The said Counsel, *where employed*) advised that the title was a good holder's title, and I know of nothing which would lead me to suppose that there is any adverse claim in existence against it.

The said land has been duly conveyed to the said Council (subject to the incumbrances, leases, conditions, the farm rent, &c., &c., set forth in the Schedule hereto).

From the above consideration I am able to state that the said Council have a good holding title to the said land (subject as aforesaid).

THE SCHEDULE.

And I make, &c.

RULES UNDER SMALL HOLDINGS ACT, 1892.

SCHEDULE OF
FORMS.
—

Form 3.

Instrument of Transfer on a sale of a Small Holding by the County Council.

—

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.

No. of Title

of — 189 . In consideration of £ — [and if so of the perpetual rentcharge of £ — secured by instrument of even date herewith or otherwise as provided by section 6 of the Act]. The County Council of — hereby transfer to — of —, all the land [shewn and edged with red on the map marked — sealed by the said Council and also signed by or on behalf of the said Transferee being part of the land] comprised in the title above referred to for the purposes of a small holding under the Small Holdings Act, 1892.

(The Seal of the County Council.)

—

Form 4.

Perpetual Rentcharge to secure part of Purchase Money for a Small Holding.

—

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.

No. of Title

of — 189 . To secure £ —, part of the purchase money of the land [shown and edged with red on the map marked —, signed by me, being part of the land] comprised in the title above referred to, I, — of — hereby charge the said land with the payment to the County Council of — of a perpetual yearly rentcharge of £ — payable on the — of — the — of — in every year.

[The charge will be printed on a double folio, similarly to charges made under the Land Registry Rules of 1889, to be obtained at the registry.]

N.B.—Sect. 44 of Conveyancing Act, 1881, combined with Rule 38, gives necessary powers of distress and entry.

Form 5.

*Charge repayable by Half-Yearly Instalments to secure part
of Purchase Money for a Small Holding.*

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.

No. of Title

of ——— 189 . To secure £——, part of the purchase money of the land [shown and edged with red on the map marked ———, signed by me, being part of the land] comprised in the title above referred to, I, ——— of ——— hereby charge the said land with the payment to the County Council of ——— of the sum of £—— payable by the ——— half-yearly instalment of £—— with interest at ——— per cent. per annum on the amount for the time being remaining unpaid on the ——— of ——— and the ——— of ——— in every year.

[The charge will be printed on a double folio, similarly to charges under the Land Registry Rules of 1889, to be obtained at the registry.]

N.B.—All further necessary powers are in sects. 22 to 28 of the Land Transfer Act and Conveyancing Act, 1881, sects. 19 to 22 and Rules 38 and 40.

Form 6.

*Terminable Annuity to Secure part of Purchase Money for a
Small Holding.*

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.

No. of Title

of ——— 189 . To secure £——, part of the purchase money of the land [shown and edged with red on the map marked ——— signed by me being part of the land] comprised in the title above referred to, and interest thereon at ——— per cent. per annum, I, ——— of ——— hereby charge the said land with the payment to the County Council of ——— of an Annuity of £—— for ——— years payable

RULES UNDER SMALL HOLDINGS ACT, 1892.

SCHEDULE OF half-yearly on the — day of — and the — of
FORMS. — in every year.

[The charge will be printed on a double folio, similarly to charges under the Land Registry Rules of 1889, to be obtained at the registry.]

N.B.—Sect. 44 of Conveyancing Act, 1881, combined with Rule 38, gives necessary powers of distress and entry.

Form 7.

*Instrument of Transfer on Sale by County Council under
Section 9 of the Small Holdings Act, 1892.*

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.

No. of Title

of — 189 . In consideration of £— [and if so of the perpetual rentcharge of £— secured by Instrument of even date herewith, or otherwise as provided by section 6 of the Act], and by virtue and in pursuance of section 9 of the Small Holdings Act, 1892, the County Council of — hereby transfer to — of — the land comprised in the title above referred to [free from the charge (s) dated the — of — 18 , and the — of — 18 , and the annuity dated the — of — 18 , registered against the said title as the case may be], and free from the conditions (b), (c), (d), &c., of sub-section 1 of the said section 9 of the said Act.

(Seal of the Council.)

Form 8.

*Application for Registration of the Executor or Administrator
of a Deceased Proprietor.*

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.

No. of Title.

A. B., of —, the Executor [Administrator] of C. D., of — deceased, the registered proprietor of the above title, hereby applies for registration in his place.

Dated the — of —, 189 .

(Signature of Executor [or Administrator]
or his Solicitor.)

Form 9.

SCHEDULE OF
FORMS.

Statutory Declaration of Identity of a Testator or Intestate.

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS ACT, 1892.

No. of Title.

I, _____ of _____ solemnly and sincerely declare as follows:—

I knew C. D. _____ of _____ the Testator [Intestate] named in the Probate [Letters of Administration] now produced and shewn to me marked _____. The said C. D. was to the best of my knowledge and belief the same person as the C. D. of

[registered address]

named in the register under the title above referred to.

And I make, &c.

Form 10.

Additions to Instrument of Transfer on Sale under Section 15 of "The Small Holdings Act."

(1.) After "In consideration of £———" add "and by virtue and in pursuance of section 15 of the Small Holdings Act, 1892."

(2.) At the end of the Instrument add "to hold the same free from all obligations and liabilities under or by reason of the said Act."

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS
Act, 1892.

ORDER AS TO FEES.

RULE.

I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, with the concurrence of the Treasury, by virtue and in pur-

**FEE ORDER
RELATING TO
-SMALL
HOLDINGS.**

suance of the Land Transfer Act, 1875, and the Small Holdings Act, 1892, and of all other powers and authorities enabling in that behalf, Do determine that the fees to be paid in the land registry in respect of transactions under the last-mentioned Act shall be regulated as follows, namely :—

The fee for provisional registration (to be paid on leaving the application for registration) shall be the same as for an absolute title, but no fee shall be charged on the complete registration of the same as absolute.

The fee payable on the registration of a purchase of a small holding on first transfer from the County Council shall be $\frac{1}{2}d.$ in the pound, and no registration fee shall be payable in respect of any charge made by such purchaser in favour of the County Council as part of the purchase arrangement if left for registration within three months of the registration of such purchaser.

The fee chargeable on the issue of a land certificate in respect of the first transfer of a small holding for a value exceeding 300%* and not exceeding 1,000%, if applied for within three months of the first registration of the purchaser, shall be 5s.

In all other respects the fee orders for the time being in force in the land registry shall apply.

Dated this 15th of August, 1892.

HALSBURY, C.

We certify that this Rule is made with the concurrence of the Treasury.

Signed { GEORGE J. GOSCHEN.
HERBERT EUSTACE MAXWELL.

* No fee is payable for a land certificate by a transferee of land on a transfer not exceeding 300% in value.

LAND REGISTRY.

LAND TRANSFER ACT, 1875, AND SMALL HOLDINGS
Act, 1892.

SUGGESTIONS

*for facilitating the progress of Applications for Registration
by County Councils under Section 10 (1) of the Small
Holdings Act.*

1. Contracts for the purchase of land for the purposes of the Small Holdings Act should, wherever practicable, be made conditional on the acceptance of the title by the land registry as absolute, and on the vendor giving all necessary facilities to that end.

An analogous provision (to the effect that the title must be approved by the Court) is commonly inserted in contracts for the purchase of land by trustees and other persons where the purchase-money is to be paid out of funds in Court, and is found to work satisfactorily.

2. As soon as the contract is signed, application should be made to the land registry, under Rule 9, for a reference to conveyancing counsel (of not less than ten years' standing).

3. The solicitor to the County Council should then investigate the title under such counsel's directions, and obtain (if practicable) all evidence necessary to enable the latter to report the title to the registrar as fit for registration as absolute under Rule 12.

4. With regard to the investigation of title it may be observed that section 17 of the Land Transfer Act, 1875, enables a title to be registered as absolute though open to objection, provided that it is one the holding under which in the opinion of the registrar, will not be disturbed, and that Rule 2 of the Land Transfer Rules of 1889 gives a

SUGGESTIONS
AS TO SMALL
HOLDINGS.

general discretion to the registrar with regard to the acceptance of titles which are good holding titles, and which have been investigated and accepted outside the office on recent dealings for value though not deduced for the full period. It would seem, therefore, that a title which would fail to satisfy such very moderate requirements would hardly be a proper investment for public money.

5. In case for any reason the above suggestions cannot be followed, it may be observed that the Rules also provide (Rule 4) for the provisional registration of the County Council with such title as may be practicable under the circumstances of the case. Thus, where despatch is of importance, the registration of the County Council and the transfer to the small holder can be effected without waiting for the completion of all formalities required for an absolute title. Under Rules 4 and 8 the several purchasers will be able to obtain the benefit of the absolute registration when completed, and Rule 42 is intended to protect the County Council and their purchasers from any practical inconvenience arising in the meantime on sales, &c., owing to the provisional nature of the registration.

6. In any case the conveyance to or by the County Council should show the property on the ordnance map (Rule 10), as registration is always made by means of that map. The 25-inch scale, uncoloured edition, is the one recommended for use, with any corrections or enlargements that may be necessary.

7. The fees are regulated by the Fee Order of 16th January, 1889, as modified by the special Fee Order issued under the Act. The General Rules regulating applications are dated 25th December, 1875, 1st January, 1889, and 9th August, 1892. It is in contemplation to publish these in one edition, or possibly in a consolidated form.

August, 1892.

Section IV.

ORDER OF
1ST JANUARY,
1876.

TRANSFER OF LAND FROM THE REGISTER KEPT UNDER THE LAND REGISTRY ACT, 1862.

ORDER OF 1ST JANUARY, 1876.

1. Any person or persons appearing from the register kept pursuant to the Act of the 25 & 26 Vict. c. 53, hereinafter called "The Land Registry Act, 1862," to be entitled to such an estate or interest as would enable him or them to make an original application under the Land Transfer Act, 1875 (hereinafter called the principal Act), to be registered as first proprietor or first proprietors, or to have a nominee or nominees registered in his or their stead if not registered under the Land Registry Act, 1862, or if there be no such person or persons, then any person or persons appearing from the said register to be beneficially interested, may at any time after the commencement of the principal Act, and with the consent of such persons, if any, as the registrar may think proper, apply (a) to be registered, or (if the case so admit) to have registered in his or their stead a nominee or nominees as proprietor or proprietors, and the registrar may register him or them in the same manner, and with the same incidents in and with which the registrar is by the principal Act empowered to register the proprietorship of land, and such registration shall be made without the payment of any official fees (b).

Who may
apply for
transfer from
the register
under the
Land
Registry Act,
1862.

2. Upon any application under these Orders the registrar may dispense with any of the proceedings under the General Rules made under the principal Act as he shall

Power to
dispense with
proceedings
under General
Rules.

(a) A form of application is printed and issued by the office.

(b) Stationers' charges amounting to a few shillings are however payable by the applicant.

TRANSFER FROM ACT OF 1862.

ORDER OF
1ST JANUARY,
1876.

consider proper to be dispensed with, and the matter shall be proceeded with as the registrar shall direct (c).

Closing of old
register after
re-registra-
tion.

3. Upon any registration being made under these Orders, the register under the Land Registry Act, 1862, shall be closed, and a note made thereon that the land is registered under the principal Act. And the registry under the principal Act shall be subject to the entries in the said register at the closing thereof, and to any rights acquired in pursuance of registry under the Land Registry Act, 1862.

Office copies
of entries of
closed register
to be evidence.

4. The registrar may at any time after the said register has been closed, direct the delivery out of office copies of or from the register as at the date of the closing thereof, to any person who shall satisfy him that the same ought to be delivered to him; and such office copies shall be *prima facie* evidence of the entries contained in the register in respect of the several matters mentioned in such office copies.

Appeal.

5. Any person aggrieved by any order of the registrar under these Orders may appeal to the Court in the manner provided by the General Rules of the 24th day of December, 1875.

ORDER OF
29TH DECEM-
BER, 1897.

ORDER OF 29TH DECEMBER, 1897.

I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, by virtue and in pursuance of the Land Transfer Acts, 1875 and 1897, and of all other powers and authorities enabling me in that behalf, do make the following Rules for the purpose of providing for the registration under the said Acts of titles registered under the Land Registry Act, 1862.

(Signed) HALSBURY, C.

(c) A statement to be signed by the applicant and his solicitor (if any) appended to the form of application is all that is usually required.

1. From and after the 1st January, 1898, on the registration of any transfer (except by way of mortgage) or transmission of an estate in fee simple in land registered under the Land Registry Act, 1862, the title shall be transferred to the register kept under the Land Transfer Acts, 1875 and 1897.

2. In effecting such transfer it shall not be necessary for the registrar to make enquiry into any matter not appearing on the register at the time of the transfer.

3. These Rules are to be read as one with the Rules on the same subject dated 1st January, 1876.

Dated this 29th day of December, 1897.

ORDER OF
29TH DECEMBER,
1897.

Transfer from
old register to
take place on
every trans-
mission of an
estate in fee
except by way
of mortgage.

Registrar
need not go
behind
register.

Rules to be
read with
preceding
Rules.

CHAPTER VI.
PRECEDENTS.

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Section I.

CONTRACTS FOR SALE—ABSOLUTE
TITLE.

I. AGREEMENT FOR SALE BY REGISTERED PROPRIETOR
OF FREEHOLD LAND.

Parties.

AN AGREEMENT made the — day of —, 18—, between A., of &c., hereinafter called the vendor, of the one part, and B., of &c., hereinafter called the purchaser, of the other part.

Whereby the vendor, so far as relates to the acts on his part to be performed, agrees with the purchaser, and the purchaser, so far as relates to the acts on his part to be performed, agrees with the vendor as follows, that is to say :

Agreement to
sell and
purchase.

1. The vendor, as registered proprietor under the Land Transfer Acts, 1875 and 1897, with an absolute title, is to sell and the purchaser is to purchase at the price of £—— the registered freehold land hereinafter mentioned subject to such liabilities declared by the said Acts not to be incumbrances as are mentioned in the schedule hereto, but otherwise free from such liabilities and from incumbrances, that is to say :

Parcels (a).

All that, &c. [*taking parcels from registered description and referring to registered plan and number denoting the title.*]

(a) There is now no need to provide that the description contained in the register shall be conclusive as to boundaries and extent: see L. T. A., 1875, s. 83 (5); L. T. A., 1897, s. 14; and L. T. R., 1898, rr. 209—221.

2. The purchaser [*where there is a deposit*, having this day paid to the vendor the sum of £—, as a deposit and in part payment of his purchase-money] is to pay the balance of his purchase-money on the — day of — next, at the office, No. —, — Street, —, of Messrs —, the solicitors of the vendor, at which time and place the purchase is to be completed, save for the perfecting of the purchaser's title by registration, and the purchaser paying [the balance of] his purchase-money is as from that day to be let into possession or into receipt of rents and profits, and up to that day all rent, rates, taxes and outgoings are (if necessary) to be apportioned, and if from any cause whatever, other than wilful default on the part of the vendor, the completion (save as aforesaid) of the purchase is delayed beyond the last mentioned day [the balance of] the purchase-money is to bear interest at the rate of £4 per cent. per annum from that day to the day of actual payment thereof.

SALE BY
PRIVATE
CONTRACT
(Absolute
Title).

Time for
completion.

3. The purchaser is within — days after delivery of his abstract to send to the solicitors of the vendor a statement in writing of all the objections and requisitions (if any) to or on the title or evidence of title, or the abstract, or this agreement, and subject thereto the title is to be deemed accepted, and all objections and requisitions not included in any statement sent within the time aforesaid are to be deemed waived, and an answer to any objection or requisition is to be replied to in writing within ten days after the delivery thereof, and if not so replied to, is to be deemed satisfactory, and time is to be deemed in all respects as of the essence of this clause: and if the purchaser should take any objection, or make any requisition which the vendor is unable or unwilling to remove or comply with, and should not withdraw the same within — days after being required so to do, the vendor may by notice in writing delivered to the purchaser or his solicitor, and notwithstanding any intermediate negotiation, rescind this agreement [*where there is a deposit*, and is within one week after such notice to repay to the purchaser his deposit money], and the purchaser

Time for
delivery of
requisitions.

SALE BY
PRIVATE
CONTRACT
(Absolute
Title).

Commence-
ment of title.

is thereupon to return forthwith all abstracts and papers in his possession belonging to the vendor, and is not to make any claim on the vendor for costs or otherwise.

4. The abstract of title is to commence with the land certificate, but notwithstanding anything contained in section 16 of the Land Transfer Act, 1897, the purchaser is to be entitled to copies of any subsisting leases or agreements for leases whether noted on the register or not (*b*), and also to the like covenants for title [with respect to rights included as well as excluded from the effect of registration and] with respect to liabilities, interests, or rights which are declared by section 18 of the Land Transfer Act, 1875, as amended, not to be incumbrances as he would be entitled to if the land hereby agreed to be sold were unregistered (*b*).

Legal estate.

4A. The property was transferred for value to the vendor in the year 1899, and he has not disposed of the legal estate in fee simple off the register; accordingly the purchaser may if he so desire, but subject to the approval of the registrar, add sufficient words of limitation to the deed of transfer to enable an estate in fee simple to be passed before registration [*or* By a transfer for value dated the, &c., the property became vested in X.; since that date the legal estate in fee simple has been conveyed off the register, and is now, it is believed, vested in Y. If the purchaser requires the same to be got in he is to get the same in and trace the title thereto at his own expense, but the said Y. will, if the purchaser so desires, join in the deed of transfer to enable the purchaser to acquire the estate (if any) of the said Y. before registration].

Statutory
declaration.

5. A draft of the statutory declaration to which the purchaser is entitled under section 16 of the Land Transfer Act, 1897, for perusal and approval by or on behalf of the purchaser is to be delivered with the abstract of title.

(*b*) See L. T. A., 1875, ss. 18, 50; L. T. A., 1897, s. 16; L. T. R., 1898, r. 79, notes. The part in square brackets should be omitted if the fee simple is not to pass to the purchaser till registration.

The cost of such declaration, other than the cost of such perusal and approval as aforesaid, is to be borne by the vendor (c).

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CONTRACT
(Absolute
Title).

[Add special conditions (if any).]

6. The deed of transfer is to be prepared by the purchaser and at his own expense, and the engrossment thereof is to be delivered at the office of the solicitors of the vendor before the — day of — next, for execution by the vendor and other necessary parties (if any) (d); and the draft of such deed of transfer for perusal and approval on behalf of the vendor and other necessary parties (if any) is to be left at the said office at least seven days before delivery of the engrossment. Upon payment of the [balance of the] said purchase-money the vendor is to deliver the deed of transfer duly executed to the purchaser [together with the land certificate and the certificates of any registered charges discharged out of the purchase-money, and until the title of the purchaser is registered he is to have in addition to all other rights the like rights as he would have had if he had advanced his purchase-money upon mortgage by deposit of the land certificate and charge certificates (if any) (e)].

Deed of
transfer.

(c) See L. T. A., 1897, s. 16, and note thereto.

(d) See L. T. R., 1898, rr. 127, 155. The purchaser should submit the draft to the land registry if the official forms are in any way departed from. It is assumed in this precedent that no incumbrances were entered in the register on first registration, or, if so entered, have since (see L. T. R., 1898, rr. 121, 122) been registered. For the contrary case, see Conditions of Sale, Form 10, *infra*.

(e) Where the sale is of part of a property comprised in a title, substitute for the part in square brackets—

The present land certificate [and the charge certificates] relate[s] to other land not included in this agreement, and the vendor will, but at the cost of the purchaser, before completion obtain a new certificate in the vendor's name in respect of the land hereby agreed to be sold, and upon payment of [the balance of] the said purchase-money the new certificate [but not the charges certificates] is also to be handed over

SALE BY
PRIVATE
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(Absolute
Title).

No compensa-
tion for errors
in registered
description.

7. The aforesaid description of the property is [or is based on] the registered description thereof (*f*), and is believed to be, and is to be taken as correct, and any error found therein is not to annul the sale nor entitle the purchaser to be discharged from his purchase, nor is the vendor or purchaser to claim or be allowed any compensation in respect thereof, but without prejudice to the rights (if any) of the purchaser to claim indemnity under the Land Transfer Acts, 1875 and 1897, or to the liability (if any) of the vendor to refund any such indemnity under the same Acts.

Power to re-
sell on default.

Lastly. If the purchaser should neglect or fail to perform this agreement on his part [his deposit money is to be forfeited to the vendor, and], the vendor may, with or without notice, re-sell the premises without previously tendering a conveyance to the defaulting purchaser, and any re-sale may be made by auction or private contract at such time, subject to such conditions and in such manner generally as the vendor thinks proper; and if thereby the vendor should incur a loss by reason of diminution in price or expenses incurred, or both, the purchaser under this agreement is to pay to the vendor the amount of such loss as liquidated damages [receiving credit for the deposit], and on any re-sale by auction the premises may be bought in, and all expenses consequent on an unsuccessful attempt to re-sell are to be forthwith paid to the vendor by the purchaser under this agreement.

AS WITNESS, &c.

to the purchaser, who until registration is to have, in addition to any other rights, the same rights as he would have had if he had advanced his purchase-money upon mortgage by deposit of the land certificate [and on or before the execution of the said deed of transfer any certificate of charge affecting the premises shall be deposited at the land registry to enable the purchaser to be registered free therefrom].

(*f*) Where the boundaries have been accurately defined, and the whole of the land comprised in a title is sold, this condition may be omitted: L. T. R., 1898, rr. 211, 212.

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THE SCHEDULE ABOVE REFERRED TO (*g*).

SALE BY
PRIVATE
CONTRACT
(Absolute
Title).

1. An indenture of lease, dated, &c.
2. Land tax and tithe rentcharge.
3. Quit, chief, and other rents, rights of way, light, and other easements, if any.

CONTRACTS FOR SALE—POSSESSORY TITLE.

AGREEMENT FOR SALE BY REGISTERED PROPRIETOR OF FREEHOLD LAND.

II.

AN AGREEMENT made, &c. [*continue as in Precedent I.*].

1. The vendor, as registered proprietor under the Land Transfer Acts, 1875 and 1897, with a possessory title, the date of first registration being the — day of —, is to sell [*continue as in Precedent I.*].

Agreement to
sell and
purchase.

2 and 3. [*As in Precedent I.*]

Time for
completion:
Time for
delivery of
requisitions.
Commence-
ment of
registered and
paramount
titles.

4. The abstract of the registered title is to commence with the land certificate, but [*continue as in Precedent I., adding at the end*] And the abstract of title to estates and interests paramount to the fee simple conferred by first registration is to commence with an indenture dated in the year 18—, being a conveyance on sale (*or as the case may be*) [*or, Inasmuch as the statutory declaration filed at the land registry at the time of first registration shows that no estates, rights or interests, paramount to the estate of the first registered proprietor, were existing or capable of arising at the date of first registration, the purchaser is not, save at his own expense, to be entitled to any abstract of title to the estate of the first registered proprietor, but the purchaser may, at any time within seven days from the*

(*g*) The schedule should contain any liabilities within L. T. A., 1875, s. 18, as amended, which affect the property.

SALE BY
PRIVATE
CONTRACT
(Possessory
Title).
—

date hereof, by notice in writing to the vendor's solicitor, and on payment of a fee of £—— and the costs of copying, require such abstract to be delivered, and in that case the abstract is to commence with an indenture, &c. (*as the case may be*).

Legal estate.

4A. [*Same as in Precedent I., so long as the legal estate has once been got into a registered proprietor. If it is one of the estates paramount to the fee conferred by first registration it should be got in by a separate deed, and the clause should not be used.*]

Statutory
declaration.

5. [*Same as in Precedent I.*]

[*Add special conditions (if any) as to both the paramount and registered titles.*]

Deed of
transfer and
conveyance.

6. The deed of transfer and any separate conveyance of any estate, right or interest, paramount to the power of disposition of the registered proprietor, are to be prepared by the purchaser, and at his own expense, and the engrossments thereof are to be delivered at the office of the solicitors of the vendor before the —— day of —— next, for execution by the vendor and other necessary parties (if any), and the drafts of such transfer and conveyance for perusal and approval on behalf of the vendor and other necessary parties (if any) are to be left at the said office at least seven days before the delivery of the engrossments. Upon payment of the [balance of the] said purchase-money the vendor is to deliver the deed of transfer and the separate conveyance (if any), duly executed, to the purchaser [*continue as in Precedent I. to end*].

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

[*To contain particulars of liabilities within L. T. A., 1875, s. 18, as amended, which affect the property.*]

CONDITIONS OF SALE.

III.

NOTE.—Only such conditions are here printed as require some variation from the forms used on the sale of unregistered land (h).

1. The [Each] purchaser is at the close of the sale to him to pay a deposit of £—— per cent. on the amount of his purchase-money, and to sign an agreement in the form subjoined to these conditions, and to pay the remainder of his purchase-money [including the valuation as hereinafter provided] on the —— day of ——, at the office, No. —, —— Street, in ——, of Messrs. ——, the solicitors of the vendor[s], at which time and place the purchase[s] is [are], save for the perfecting of the [a] purchaser's title by registration, to be completed, and the [a] purchaser paying his purchase-money is as from that day to be let into possession or receipt of rents and profits, and up to that day all rent, rates, taxes, and outgoings are (if necessary) to be apportioned, and if from any cause whatever, other than the wilful default on the part of the vendor[s], the completion (save as aforesaid) of the [any] purchase is delayed beyond the before-mentioned day, the remainder of the purchase-money [including the valuation] is to bear interest at the rate of £4 per cent. per annum from that day to the day of actual payment thereof.

Time for completion.

2. The abstract of title [to lots ——] is to commence with the land certificate, but notwithstanding anything contained in section 16 of the Land Transfer Act, 1897, the [a] purchaser is to be entitled to copies of any subsisting leases or agreements for leases, whether noted on the register or not, and also to the like covenants for title [with respect to rights included as well as excluded from

Commencement of title. (Absolute title.) Variations where incumbrances created prior to first registration are subsisting and have not been registered.

(h) The authors take this opportunity to thank Mr. Wolstenholme for his kind permission to adapt his forms.

CONDITIONS
OF SALE.

the effect of registration, and (i)] with respect to liabilities, interests, or rights (i) which are declared by section 18 of the Land Transfer Act, 1875, as amended, not to be incumbrances, as the [a] purchaser would be entitled to if the property were unregistered. [And the abstract of title to incumbrances created prior to first registration, and still subsisting, is to commence with an indenture of mortgage, dated, &c.]

Commence-
ment of title
(possessory
title).

3. The abstract of the registered title is to commence with the land certificate, but (*continue as in last form, adding at the end*): And the abstract of title to [lots —, or the property], as regards estates and interests paramount to the fee simple conferred by first registration, is to commence with an indenture, dated, &c. (*or as the case may be*) [or, Inasmuch as the statutory declaration, dated twenty years or upwards (j) prior to the day of sale, and filed at the land registry at the time of first registration, contains particulars of all estates, rights, and interests paramount to the fee simple conferred by first registration, the abstract of title relating to the same is to commence with the said declaration, and the [each] purchaser is to be entitled only to an abstract showing the devolution or discharge of all such estates, rights, and interests].

Commence-
ment of title;
leaseholds
(possessory
title).

4. The abstract of the registered title is to commence with the land certificate [*or, where first registration occurred before 1898, with the office copy lease*], but (*continue as in Form 2, adding at the end*): And the abstract of title to [lots —, or the property], as regards rights and interests paramount to the leasehold interest conferred by first registration (k), is to commence with an indenture of lease,

(i) See L. T. A., 1875, ss. 18 and 50; L. T. A., 1897, s. 16; L. T. R., 1898, r. 79, notes; the part in square brackets should be omitted if the fee simple is not to pass to the purchaser till registration.

(j) Unless the contrary is proved, a statutory declaration twenty years old is good evidence: V. & P. A., 1874, s. 2 (2).

(k) See L. T. R., 1898, r. 48. It is assumed in this form that,

dated, &c. [*or*, Inasmuch as the statutory declaration, filed at the land registry at the time of first registration, shows that the first registered proprietor was the original lessee and had not encumbered his term or interest, no abstract is to be furnished besides the abstract of the registered title, but the [each] purchaser is to be entitled to a copy of the lease mentioned in the particulars under which the property [*or* lots —] is [are] held].

CONDITIONS
OF SALE.
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5. (*See Precedent I., clause 4a; also note to clause 4a of Precedent II.*)

Where legal estate is to be conveyed to purchaser before he is registered.

6. (*As to the statutory declaration to which a purchaser is entitled, see Precedent I., supra, clause 5.*)

Costs of statutory declaration.

7. The vendor is registered as proprietor of the property [*or* lots —] with an absolute title under the Land Transfer Acts, 1875 and 1897, and the property [*or* lots —] is [are] sold subject to such liabilities declared by the said Acts not to be incumbrances (*l*) as are mentioned in the particulars and these conditions, but otherwise free from such liabilities and incumbrances.

Vendor selling as registered proprietor (absolute title).

8. The vendor is registered as proprietor of the property [*or* lots —] with a possessory title under the Land Transfer Acts, 1875 and 1897, the date of first registration being the — day of — 18—, and the property [*or* lots —] is [are] sold (*continue as in Form 7, supra*).

Vendor selling as registered proprietor (possessory title).

9. The vendor is a tenant for life [*or* a person having the powers of a tenant for life] within the meaning of the Settled Land Acts, 1882 to 1890, under a settlement made prior to the registration of the vendor (who is the first registered proprietor of the property [*or* lots —] with a possessory title under the Land Transfer Acts, 1875 and 1897) [*or* made prior to the first registration of the property (whereof the vendor is the present registered proprietor with a possessory title under the Land Transfer Acts, 1875 and 1897)]. For the purpose of overriding

Vendor being registered proprietor selling as tenant for life (possessory title).

in accordance with the usual practice, no investigation of the lessor's title to grant the lease is to be made.

(*l*) See L. T. A., 1875, s. 18, as amended.

CONDITIONS
OF SALE.

estates and interests paramount to the estate conferred by first registration the vendor sells and will convey as such tenant for life as aforesaid, the trustees for the purposes of the Settled Land Act, 1882, joining in the conveyance for the purpose only of acknowledging the receipt of the purchase-money and joining in the deed of transfer for the purpose of complying with the restriction in that behalf entered on the register, and the [a] purchaser is not to require any covenant for title in the said deed of transfer nor any covenant in the said conveyance, except the statutory covenant implied by the vendor conveying as beneficial owner with a proviso limiting the same in the usual manner. The property [or lots —] is [are] sold (*continue as in Form 7, supra*).

Deed of
transfer and
completion on
sale of one
registered
property in
lots (absolute
title).

10. The deed of transfer [and the release of any subsisting incumbrances entered in the register on first registration] is [are] to be prepared by a purchaser and at his own expense, and the engrossment[s] thereof is [are] to be delivered at the office of the vendor's solicitors before the — day of — next, for execution by the vendor and other necessary parties, if any (*m*), and the draft[s] of such deed of transfer [and the release] for perusal and approval on behalf of the vendor and other necessary parties (if any) is [are] to be left at the said office at least seven days before delivery of the engrossment[s]. Upon payment of the [balance of the] said purchase-money the vendor is to deliver the deed of transfer [and the release] duly executed to the purchaser. The present land certificate [and the charge certificates] relate[s] to all the lots included in this sale and the vendor will, but at the cost of each purchaser, before completion obtain a new certificate in the vendor's name of the lot or lots sold to each purchaser. And upon payment of [the balance of] the said purchase-money the new certificate [but not the charges

(*m*) See L. T. R., 1898, rr. 127, 155. The purchaser should submit the draft deed of transfer to the land registry, if the official forms are in any way departed from.

certificates] shall also be handed over to each purchaser of the lot or lots comprised in that certificate, who until registration is to have, in addition to any other rights, the same rights as he would have had if he had advanced his purchase money upon mortgage by deposit of the land certificate [and on or before the execution of the deed of transfer any certificate of charge affecting the lot or lots sold is to be deposited at the land registry to enable a purchaser to be registered free therefrom].

CONDITIONS
OF SALE.

11. The deed of transfer and the separate conveyance of any estate, right or interest, paramount to the power of disposition of the registered proprietor, are to be prepared by a purchaser, and at his own expense, and the engrossments thereof are to be delivered at the office of the vendor's solicitors before the — day of — next for execution by the vendor and other necessary parties, if any, and the drafts of such deed of transfer and the conveyance for perusal and approval on behalf of the vendor and other necessary parties (if any), are to be left at the said office at least seven days before delivery of the engrossments. Upon payment of [the balance of] the purchase money, the vendor is to deliver the deed of transfer and the conveyance, if any, duly executed to the purchaser. The present land certificate [*continue as in Form 10, supra*].

Deed of transfer and conveyance on sale of one registered property in lots (possessory title).

12. The description of the property [Lots —] is [*or* is based on] the registered description thereof (*continue as in Clause 7 of Precedent I., supra*).

No compensation for errors in registered description.

SPECIAL CONDITIONS OF SALE.

13. The property [*or* Lot —] was sold in the year 18—, and the purchaser on such sale was duly registered as the first proprietor thereof with a possessory title, but

Where no conveyance made to the first registered proprietor [and his contract for sale is lost] (n).

(n) It is understood that the practice at the registry is to require a conveyance to be made to a purchaser before registering the land in his name; but see L. T. A., 1875, s. 5 (1).

**SPECIAL
CONDITIONS
OF SALE.**

no conveyance was executed to such purchaser [and the contract for such sale cannot be found]. No objection shall be taken on account of the legal estate being outstanding or otherwise on account of the absence of such conveyance [or the non-production of such contract], and no purchaser is to be entitled to any evidence that the first proprietor was duly registered in pursuance of such sale, except such as may be obtained by an inspection of the register [and of the contract for purchase entered into by the first proprietor (o)].

Conveyance
by real repre-
sentatives to
be proof of
heirship (p).

14. The personal representatives of a person who died in the year 1898 intestate, conveyed the property [or Lots —] to a predecessor in title of the vendor. A purchaser is to assume, as is believed to be the case, that the person to whom the conveyance was made was the heir-at-law of the intestate [or was made by the direction of the heir-at-law of the intestate] without any evidence of heirship, besides the production of the said conveyance.

Section II.

IV.
CONVEYANCE
OF PARAMOUNT
ESTATE.
(Possessory
Title.)

**CONVEYANCE OF REGISTERED FREEHOLD LAND BY
THE FIRST REGISTERED PROPRIETOR AND A
MORTGAGEE UNDER A LEGAL MORTGAGE MADE
PRIOR TO FIRST REGISTRATION.**

Parties.

THIS INDENTURE (q), made &c., between A. B., of &c. (hereinafter called "the mortgagee"), of the first part, C. D., of &c. (hereinafter called "the vendor"), of the

(o) These words should be inserted only when the contract can be produced.

(p) See L. T. A., 1897, s. 3. No such condition is required in the case of registered land: L. T. R., 1898, r. 130, Form 46; L. T. A., 1875, ss. 30, 32.

(q) This conveyance, and not the transfer, should bear the *ad valorem* stamp: L. T. R., 1898, r. 164.

second part, and E. F., of &c. (hereinafter called "the purchaser"), of the third part.

CONVEYANCES
ON SALE OF
REGISTERED
LAND.

WHEREAS by an indenture of mortgage, dated &c., and made between the vendor of the one part, and the mortgagee of the other part, the hereditaments hereinafter described were conveyed by the vendor, as owner in fee simple, to the use of the mortgagee in fee simple by way of mortgage for securing payment by the vendor to the mortgagee of the principal sum of £ — and interest thereon as therein mentioned.

Recitals.
Mortgage.

AND WHEREAS on the — day of —, 1898, the vendor was duly registered under the Land Transfer Acts, 1875 and 1897, as proprietor of the said hereditaments with a possessory title.

Registration
of vendor.

AND WHEREAS the vendor has agreed with the purchaser for the sale to him of the said hereditaments for an estate in fee simple in possession, free from incumbrances at the price of £ —.

Agreement
for sale.

AND WHEREAS by deed of transfer of even date herewith the vendor has in part pursuance of the said agreement transferred the said hereditaments to the purchaser.

Prescribed
transfer.

AND WHEREAS the principal sum of £ — remains owing to the mortgagee upon the security of the recited mortgage, but all interest has been paid thereon up to the date of these presents, as the mortgagee hereby admits, and the mortgagee has agreed upon receiving the said sum of £ — to join in these presents in manner hereinafter appearing.

State of the
mortgage
debt.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the sum of £ — to the mortgagee, paid by the purchaser (the receipt of which sum of £ — the mortgagee hereby acknowledges), and also of the further sum of £ — to the vendor, paid by the purchaser (the payment and receipt of which sums of £ — and £ —, making together the total purchase money of £ —, the vendor hereby acknowledges), the mortgagee As Mortgagee and according to his estate hereby conveys and releases, and the vendor As Beneficial owner hereby conveys and confirms unto the purchaser.

CONVEYANCES
ON SALE OF
REGISTERED
LAND.

Parcels.

Habendum.

ALL &c. [*taking description from land certificate*].

To HOLD unto and to the use of the purchaser in fee simple, discharged from the said indenture of mortgage, and from all principal money and interest thereby secured, and from all claims and demands thereunder [*Add, if required, acknowledgment and undertaking as to title deeds*].

IN WITNESS, &c.

V.

CONVEYANCE
BY TENANT
FOR LIFE TO
DEFEAT
PARAMOUNT
RIGHTS.
(Possessory
Title.)

Parties.

CONVEYANCE BY TENANT FOR LIFE OF FREEHOLDS
OF WHICH HE IS THE REGISTERED PROPRIETOR
WHERE THE SETTLEMENT WAS MADE PRIOR TO
FIRST REGISTRATION.

THIS INDENTURE, made &c., between A. B., of &c. [*tenant for life*] (hereinafter called "the vendor"), of the first part, C. D., of &c., and E. F., of &c. [*trustees*] (hereinafter called "the trustees"), of the second part, and G. H., of &c. (hereinafter called "the purchaser"), of the third part.

Recitals.
Settlement.

WHEREAS by an indenture of settlement, dated, &c. [*Recite settlement of the hereditaments therein mentioned, including the hereditaments hereinafter described, showing that the vendor is tenant for life in possession, and that the trustees are trustees of the settlement for the purposes of the Settled Land Acts.*]

Registration
of vendor.

AND WHEREAS on the — day of —, 1898, the vendor was duly registered under the Land Transfer Acts, 1875 and 1897, as proprietor of the hereditaments hereinafter described with a possessory title.

Agreement
for sale.

AND WHEREAS the vendor as tenant for life in possession under the said settlement, and as such registered proprietor as aforesaid, has agreed to sell the hereditaments hereinafter described to the purchaser, and the fee simple thereof in possession, free from incumbrances at the price of £—.

Prescribed
transfer.

AND WHEREAS by deed of transfer of even date herewith the vendor has in part pursuance of the said agree-

ment [and with the consent of the trustees (r)] transferred the said hereditaments to the purchaser.

CONVEYANCES
ON SALE OF
REGISTERED
LAND.

NOW THIS INDENTURE WITNESSETH that in further pursuance of the said agreement and in consideration of the sum of £——, by the direction of vendor now paid by the purchaser to the trustees as such trustees as aforesaid (the receipt of which sum the trustees hereby acknowledge), the vendor, in exercise of the power conferred on him by the Settled Land Act, 1882, and of every other power enabling him and As Beneficial owner, hereby conveys to the purchaser.

Testatum.

ALL, &c. [taking parcels from the land certificate].

Parcels.

To HOLD unto and to the use of the purchaser in fee simple discharged from all the limitations, powers, and provisions of the said settlement, and from all estates, interests, and charges subsisting, or to arise thereunder.

Habendum.

[Add usual proviso qualifying tenant for life's covenants for title, and if required acknowledgment and undertaking as to title deeds.]

IN WITNESS, &c.

CONVEYANCE OF FREEHOLD REGISTERED LAND TO THE
USES OF A SETTLEMENT, AND OF REGISTERED
LEASEHOLDS ON CORRESPONDING TRUSTS (s).

VI.

CONVEYANCE
ON PURCHASE
OF REGISTERED
FREEHOLDS
AND LEASE-
HOLDS WITH
CAPITAL
MONEY.

THIS INDENTURE, made, &c., between A. B., of &c. (hereinafter called the vendor), of the first part, C. D., of &c. [tenant for life], of the second part, and E. F., of &c. and G. H., of &c. [trustees] (hereinafter called the trustees), of the third part.

Parties.

WHEREAS the vendor is seised in fee simple in possession free from incumbrances of the registered freehold land hereinafter described, and is also the registered pro-

Recitals.

Title of
vendor to
freeholds.

(r) The words in brackets will be required where there is a restriction to protect the settlement on the register.

(s) See, as to this precedent, notes to L. T. R., 1898, rr. 71, 81.

CONVEYANCES
ON SALE OF
REGISTERED
LAND.

Title of
vendor to
long lease-
holds.

prietor thereof under the Land Transfer Acts, 1875 and 1897, with a possessory title.

AND WHEREAS by an indenture of lease, dated, &c. [*recite lease*].

AND WHEREAS after divers mesne assignments and acts in the law, ultimately under an indenture, dated, &c., the said leasehold premises became and are now vested in the vendor for the residue of the term granted by the recited lease, and the vendor is also the registered proprietor thereof, with a possessory title under the Land Transfer Acts, 1875 and 1897 (*t*).

Settlement.

AND WHEREAS [*recite settlement showing that C. D. is tenant for life of freehold hereditaments, and that the trustees are the trustees for the purposes of the Settled Land Acts, 1882 to 1890*].

Agreement by
tenant for life
to purchase.

AND WHEREAS the said C. D., as such tenant for life as aforesaid, has agreed with the vendor for the purchase of the registered freehold land, hereinafter described for an estate in fee simple, and also of the said leasehold premises, free from incumbrances for the sum of £—, and has directed the trustees as such trustees as aforesaid, and they have agreed to apply capital money in their hands representing or being capital money arising under the Settled Land Acts, 1882 to 1890, and held on the trusts of the said settlement in payment of the said sum of £—.

Prescribed
transfer of
freeholds.

AND WHEREAS by deed of transfer bearing even date herewith the vendor has in part pursuance of the said agreement transferred the said freehold land to the said C. D., and the said deed contains an application by the trustees for the registration of a proper restriction and

(*t*) The recital shows that there are no paramount interests on foot. It seems necessary to recite the title off the register in the usual way to show that the vendor has power to convey off the register to the trustees. If the title were absolute it would mean that the lessor's power to grant the lease had been investigated, as well as the title of the first proprietor; it would not, however, follow that the vendor would have power to convey off the register: see L. T. A., 1875, s. 49.

inhibition for the protection of the persons interested under the recited settlement.

CONVEYANCES
ON SALE OF
REGISTERED
LAND.

AND WHEREAS by another deed of transfer of even date herewith the vendor has in further pursuance of the said agreement and with the consent of the trustees transferred the said leasehold premises to the said C. D., and the said deed contains a like application by the trustees for a restriction and inhibition.

Transfer of
leaseholds.

NOW THIS INDENTURE WITNESSETH that in further pursuance of the said agreement and in consideration of the sum of £—, paid by the trustees, by the direction of the said C. D. to the vendor (the receipt, &c.), the vendor, As Beneficial owner, hereby conveys unto the said C. D. ALL THAT [*taking description from land certificate*].

Testatum.
Conveyance
of freeholds.

To HOLD unto the said C. D. in fee simple to the uses upon the trusts and subject to the powers and provisions which under the recited settlement, or by reason of the exercise of any power of charging therein contained, are subsisting or capable of taking effect with respect to the freehold hereditaments subject to the limitations thereof, but not so as to increase or multiply charges or powers of charging (*u*).

Habendum.

AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and for the consideration aforesaid the vendor, As Beneficial owner, hereby conveys unto the trustees.

Conveyance
of leaseholds.

All the said premises comprised in and demised by the recited lease.

Parcels.

To HOLD unto the trustees for the residue of the term granted by the recited lease at the rent, and subject to the lessee's covenants and the conditions by and in that lease reserved and contained, and henceforth by the lessee to be paid and observed, but upon trusts and subject to powers and provisions corresponding as nearly as the law and circumstances permit with the uses, trusts, powers, and provisions which, under the recited settlement or the exercise of any power of charging jointure or portions

Habendum.

(*u*) See S. L. A., 1882, s. 24.

CONVEYANCES
ON SALE OF
REGISTERED
LAND.

therein contained, are now subsisting or capable of taking effect with respect to freehold hereditaments which are subject to the limitations of that settlement, but not so as to increase or multiply charges or powers of charging. And so that the premises hereinbefore conveyed shall not vest absolutely in any person being or becoming, under the recited settlement by purchase, tenant in tail [male or in tail] who shall die under the age of twenty-one years, but shall, on the death of such person under that age, devolve as if they were freehold hereditaments and were settled accordingly (v).

[*Add covenant by C. D. during his life to pay rent, &c.*]

IN WITNESS, &c.

Section III.

VII. CONVEYANCE ON SALE BY REAL REPRESENTATIVES.

CONVEYANCE
OF FREEHOLDS
ON SALE.

Parties.

THIS INDENTURE, made &c., between X., of &c., and Y., of &c. (hereinafter called "the real representatives"), of the one part, and A. B., of &c. (hereinafter called "the purchaser"), of the other part.

Recitals.

Will of
testator seised
in fee.

WHEREAS C. D., late of &c., deceased, being at his death seised of the hereditaments hereinafter conveyed for an estate in fee simple, free from incumbrances, duly made his will, dated, &c., and thereby appointed the real representatives (w) to be the executors thereof.

Death of
testator and
probate.

AND WHEREAS the said testator died on &c., 1898, without having revoked or altered his said will, which was on &c., proved in the principal probate registry by the real representatives.

Agreement
for sale.

AND WHEREAS the real representatives, as such executors

(v) See S. L. A., 1882, s. 24 (3).

(w) Except under an order of the Court, all the representatives must concur in the sale: L. T. A., 1897, s. 2 (2).

as aforesaid (*x*), have agreed to sell to the purchaser the hereditaments hereinafter conveyed, and the fee simple thereof in possession, free from incumbrances, at the price of £3,050.

CONVEYANCES
BY REAL
REPRE-
SENTATIVES.

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £3,050 upon the execution of these presents, paid to the real representatives by the purchaser (the receipt of which sum the real representatives hereby acknowledge), the real representatives As Personal representatives (*y*), and according to their estate, hereby convey unto the purchaser.

Testatum.
Conveyance.

ALL THAT, &c.

Parcels.

TO HOLD UNTO AND TO THE USE of the purchaser, in fee simple, discharged from the trusts of the recited will. [*Add acknowledgment as to production of deeds, if any retained.*]

Habendum.

IN WITNESS, &c.

CONVEYANCE BY REAL REPRESENTATIVES TO GIVE EFFECT TO A DEVISE (*z*) IN FEE SIMPLE, OR IN STRICT SETTLEMENT.

VIII.

CONVEYANCE
OF UNREGIS-
TERED FREE-
HOLDS TO GIVE
EFFECT TO A
DEVISE.

THIS INDENTURE, made &c., between A. B., of &c., and C. D., of &c. (hereinafter called the real representatives), of the one part, and Jane S., of &c., spinster, of the other part.

Parties.

WHEREAS John S., late of &c., being at his death seised in fee simple, free from incumbrances of the freehold (*a*) hereditaments hereinafter conveyed, duly made his will,

Recitals.
Will.

(*x*) As in the case of chattels real, the purchaser will not be concerned to inquire whether the purchase money is wanted or as to its application.

(*y*) No covenant for title is implied by conveying as real representative: see L. T. A., 1897, s. 2, and note thereto.

(*z*) See L. T. A., 1897, s. 3, and note thereto. For a precedent where the devise is on trust to sell, see No. X., *infra*.

(*a*) The L. T. A., 1897, s. 1, does not vest copyholds in the personal representative, nor, it seems, does it affect chattels real.

CONVEYANCES
ON SALE OF
REGISTERED
LAND.

Title of
vendor to
long lease-
holds.

prietor thereof under the Land Transfer Acts, 1875 and 1897, with a possessory title.

AND WHEREAS by an indenture of lease, dated, &c. [*recite lease*].

AND WHEREAS after divers mesne assignments and acts in the law, ultimately under an indenture, dated, &c., the said leasehold premises became and are now vested in the vendor for the residue of the term granted by the recited lease, and the vendor is also the registered proprietor thereof, with a possessory title under the Land Transfer Acts, 1875 and 1897 (*t*).

Settlement.

AND WHEREAS [*recite settlement showing that C. D. is tenant for life of freehold hereditaments, and that the trustees are the trustees for the purposes of the Settled Land Acts, 1882 to 1890*].

Agreement by
tenant for life
to purchase.

AND WHEREAS the said C. D., as such tenant for life as aforesaid, has agreed with the vendor for the purchase of the registered freehold land, hereinafter described for an estate in fee simple, and also of the said leasehold premises, free from incumbrances for the sum of £—, and has directed the trustees as such trustees as aforesaid, and they have agreed to apply capital money in their hands representing or being capital money arising under the Settled Land Acts, 1882 to 1890, and held on the trusts of the said settlement in payment of the said sum of £—.

Prescribed
transfer of
freeholds.

AND WHEREAS by deed of transfer bearing even date herewith the vendor has in part pursuance of the said agreement transferred the said freehold land to the said C. D., and the said deed contains an application by the trustees for the registration of a proper restriction and

(*t*) The recital shows that there are no paramount interests on foot. It seems necessary to recite the title off the register in the usual way to show that the vendor has power to convey off the register to the trustees. If the title were absolute it would mean that the lessor's power to grant the lease had been investigated, as well as the title of the first proprietor; it would not, however, follow that the vendor would have power to convey off the register: see L. T. A., 1875, s. 49.

inhibition for the protection of the persons interested under the recited settlement.

CONVEYANCES
ON SALE OF
REGISTERED
LAND.

AND WHEREAS by another deed of transfer of even date herewith the vendor has in further pursuance of the said agreement and with the consent of the trustees transferred the said leasehold premises to the said C. D., and the said deed contains a like application by the trustees for a restriction and inhibition.

Transfer of
leaseholds.

NOW THIS INDENTURE WITNESSETH that in further pursuance of the said agreement and in consideration of the sum of £—, paid by the trustees, by the direction of the said C. D. to the vendor (the receipt, &c.), the vendor, As Beneficial owner, hereby conveys unto the said C. D. ALL THAT [*taking description from land certificate*].

Testatum.
Conveyance
of freeholds.

To HOLD unto the said C. D. in fee simple to the uses upon the trusts and subject to the powers and provisions which under the recited settlement, or by reason of the exercise of any power of charging therein contained, are subsisting or capable of taking effect with respect to the freehold hereditaments subject to the limitations thereof, but not so as to increase or multiply charges or powers of charging (u).

Habendum.

AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and for the consideration aforesaid the vendor, As Beneficial owner, hereby conveys unto the trustees.

Conveyance
of leaseholds.

All the said premises comprised in and demised by the recited lease.

Parcels.

To HOLD unto the trustees for the residue of the term granted by the recited lease at the rent, and subject to the lessee's covenants and the conditions by and in that lease reserved and contained, and henceforth by the lessee to be paid and observed, but upon trusts and subject to powers and provisions corresponding as nearly as the law and circumstances permit with the uses, trusts, powers, and provisions which, under the recited settlement or the exercise of any power of charging jointure or portions

Habendum.

(u) See S. L. A., 1882, s. 24.

CONVEYANCES
BY REAL
REPRE-
SENTATIVES.

ing under the devise hereinbefore recited], to require the principal moneys and interest, or any part thereof, secured by the said indenture of mortgage to be discharged out of any money or other assets, liable to the payment of the debts of the said testator, in priority to the said hereditaments, and which may at any time hereafter come into the hands of the personal representatives or representative for the time being of the said testator (*d*).

IN WITNESS, &c.

IX.

CONVEYANCE
OF UNREGIS-
TERED FREE-
HOLDS TO AN
HEIR-AT-
LAW.

CONVEYANCE BY REAL REPRESENTATIVES TO AN HEIR-AT-LAW (*e*).

Parties.
Recitals.

Death
intestate.

THIS INDENTURE, made &c., between A. B., of &c., and C. D., of &c. (hereinafter called the real representatives), of the first part, the said C. D. of the second part, and X. of &c. (*the grantee to uses where the heir-at-law is one of the real representatives*), of the third part. WHEREAS John S., late of &c., deceased being at his death seised in fee simple free from incumbrances of the freehold hereditaments, hereinafter conveyed, died on the — day of —, 1898,

(*d*) This provision seems desirable where a charge (as in the text) has been created for raising money in aid of the personal estate (L. T. A., 1897, s. 2 (3)), and should at any rate be inserted where the land is conveyed subject to a general charge, for in that case all liabilities of the personal representatives in respect of the land are to cease (L. T. A., 1897, s. 3 (1)), and it might, perhaps, be questioned whether the devisee would not thus lose the right to be recouped.

(*e*) There is no power to assent to real estate passing to an heir. If the heir is not of full age it is desirable that the real estate should remain vested in the representatives unless S. L. A. trustees have been appointed: *see* S. L. A., 1882, ss. 59, 60.

intestate, leaving the said C. D., his eldest son (*f*) and heir-at-law, him surviving.

CONVEYANCES
BY REAL
REPRE-
SENTATIVES.

AND WHEREAS on the — day of —, 1898, letters of administration to the estate of the said John S., deceased, were duly granted out of the principal probate registry to the real representatives.

Grant of
letters of
administra-
tion.

AND WHEREAS the real representatives being satisfied that all the funeral and administration expenses and debts of the said John S. have been or can be paid or provided for without recourse to any of the real estate of the said John S. have, at the request of the said C. D., agreed to execute such conveyance as is hereinafter contained.

Intestate's
debts and
expenses
provided for.

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the premises, the real representatives, As Personal representatives, and according to their estate hereby convey unto the said X.

Testatum.
Conveyance.

ALL THAT, &c. And all other, if any, the real estate and hereditaments of the said John S., deceased, which are now by virtue of the Land Transfer Act, 1897, held by the real representatives in trust for the said C. D. as such heir-at-law as aforesaid.

Parcels.

To HOLD unto the said X. in fee simple subject to all rights to dower to which Mary S., the widow of the said John S., may be entitled in respect of the premises [*(g)*], and subject also to a charge for all money (if any) which the personal representatives from time to time of the said John S. are liable to pay, and which is properly chargeable against the premises], and so subject To the use of the said C. D. in fee simple.

Habendum.

IN WITNESS, &c.

(*f*) The widow takes no charge under the Intestates' Estates Act, 1890, where the intestate leaves issue. This charge, where existing, can now (L. T. A., 1897, s. 2) be raised by the representatives without an order of Court: *cf. Re Charriere*, 1896, 1 Ch. 912.

(*g*) In place of this general charge a covenant for indemnity should be given to the personal representatives if they will accept it: *see last Precedent*.

CONVEYANCES
BY REAL
REPRE-
SENTATIVES.

CONVEYANCE BY REAL REPRESENTATIVE TO TRUSTEES
FOR SALE UNDER A WILL (*h*).

X.

CONVEYANCE
OF UNREGIS-
TERED FREE-
HOLDS TO GIVE
EFFECT TO A
DEVISE ON
TRUST FOR
SALE.

Parties.

Recitals.

Will devising
real estate on
trust for sale.

THIS INDENTURE, made &c., between Jane R., of &c., widow (hereinafter called the real representative), of the one part, and X., of &c., and Y., of &c. (hereinafter called the trustees), of the other part.

WHEREAS John R., late of &c., deceased, duly made his will, dated &c., and thereby after appointing his wife the real representative to be his executrix, and after making divers bequests devised all his real estate, and the residue of his personal estate, unto the trustees upon the usual trusts for sale and conversion, and directed them to stand possessed of the proceeds of such sale and conversion, and the rents and profits of the premises until sale upon trust to pay his funeral and testamentary expenses, debts and legacies (but so that legacies and the duty thereon should be paid primarily out of the said personal estate), and subject thereto upon the trusts therein mentioned.

Death and
probate.

AND WHEREAS the said testator died on the — day of —, 1898, without having revoked or altered his said will which was on the — day of —, 1898, duly proved in the — district probate registry by the real representative.

Desire to
convey legal
estate.

AND WHEREAS the real representative is desirous of vesting the legal estate in the real estate of the said testator in the trustees to be held by them upon the trusts of the said will (*i*).

Testatum.
Conveyance.

NOW THIS INDENTURE WITNESSETH, that for effectuating the aforesaid desire the real representative, according to

(*h*) For a precedent where land is devised in strict settlement, see Precedent VIII., *supra*.

(*i*) As the trusts are for payment of debts, &c., there is no need to state whether the debts have been paid nor to convey subject to a general charge; but the conveyance should not be made till the debts, &c., have been paid.

her estate, and As Personal representative, hereby conveys unto the trustees

CONVEYANCES
BY REAL
REPRE-
SENTATIVES.

ALL AND SINGULAR, &c. And all other, if any, the real estate and hereditaments so devised as aforesaid.

Parcels.

To HOLD unto and to the use of the trustees in fee simple (*j*) upon the trusts and subject to the powers and provisions which under the recited will are now subsisting or capable of taking effect with respect to the same.

Habendum.

IN WITNESS, &c.

Section IV.

EQUITABLE MORTGAGE BY DEPOSIT OF LAND CERTIFICATE AND OF DEEDS RELATING TO TITLE PRIOR TO REGISTRATION BY A PROPRIETOR REGISTERED WITH A POSSESSORY TITLE TO SECURE A CURRENT ACCOUNT AT A BANK (*k*).

XI.
MORTGAGE
BY DEPOSIT.

AN AGREEMENT (*l*) made &c., between A. B., of &c. Parties. (hereinafter called "the mortgagor"), of the one part,

(*j*) A certain form has been published in which the habendum is "to the trustees and the survivor of them, or other the trustees or trustee for the time being of the said will." Now, though such words may be used for conferring a power on trustees, yet, as words of limitation in a deed, they are clearly insufficient to pass more than life estates; in this case the form might, perhaps, be given effect to by reason of the words of limitation in the premises or as evidence of an assent, but the learned draftsman could hardly have intended this.

(*k*) For a form to create a registered charge to secure further advances, see L. T. R., 1898, Form 41. Notice of this deposit should be given to the registrar: *ib.*, rr. 200—202.

(*l*) Stamps will be 1s. per 100*l.* *ad val.*, so as to cover probable

MORTGAGES.

Recitals.
Payment of
first loan.

Deposit of
deeds and
land certifi-
cate by way
of equitable
mortgage.

Testatum.
Agreement to
pay principal
and interest,
and balance
due on
account cur-
rent on
demand.

and the — Bank, Limited (hereinafter called "the bank"), of the other part.

WHEREAS the bank have at the request of the mortgagor this day advanced to him the sum of £1,700, the receipt of which sum the mortgagor hereby acknowledges.

AND WHEREAS the mortgagor has this day deposited with the bank the deeds and documents of title mentioned in the first part of the Schedule hereto, and also the land certificate mentioned in the second part of the said Schedule (under which the mortgagor is now the registered proprietor of the freehold lands and hereditaments in the parish of —, in the county of — therein mentioned, for an estate of inheritance in fee simple free from incumbrances), by way of equitable mortgage for securing payment to the bank, in accordance with the agreements hereinafter contained, of the said sum of £1,700, with interest thereon at the rate of £— per cent. per annum from the date hereof, and also of the balance for the time being due to them from the mortgagor on account current for bills, notes, or drafts accepted, paid, or discounted, or for other advances made to or for the accommodation of the mortgagor, and for commission or other usual banker's charges or otherwise [not exceeding the sum of £300], with interest thereon at the rate aforesaid from the date of demand.

NOW THESE PRESENTS WITNESS that in consideration of the premises the mortgagor hereby agrees with the bank to pay to them on the — day of — next the sum of £1,700 and interest in the meantime at the rate of £— per cent. per annum. AND also, so long as any principal money remains due under these presents after the — day of — next, to pay to them interest thereon at the

advances or up to limit (if any): Stamp Act, 1891, s. 86 (1), (e), (2), and First Schedule; and *see* *Alpe*, 6th ed. p. 181. Where the mortgagee is known, and the land certificate has been recently noted up, it is conceived that a banker would make advances on a security as in the text without previously searching the register or making enquiry by telegraph.

rate aforesaid by equal half-yearly payments on the ——— **MORTGAGES.**
day of ——— and the ——— day of ——— in every year.

AND also to pay to them on demand (by notice in writing to be given to the mortgagor or left at or affixed to or upon his usual or then last-known place of abode or business in England) the balance for the time being due to them from the mortgagor on account current for bills, notes, or drafts accepted, paid, or discounted, or otherwise as aforesaid [not exceeding the sum of £300], with interest on such balance from the date of demand until payment at the rate aforesaid.

AND the mortgagor hereby charges all the lands and hereditaments comprised in the said land certificate with the payment, in accordance with the aforesaid agreement, of the said principal sum of £1,700 and interest and of the balance for the time being due to the bank as aforesaid and interest. **Equitable charge.**

AND hereby undertakes when required, at his own cost, to execute and deliver to the bank, or the persons deriving title under them, a legal mortgage (either by way of registered charge or by way of transfer on the register, as the bank or the persons deriving title under them may direct) of the said lands and hereditaments, and to do all such other things as may be requisite to enable the said charge or transfer to be registered, and also (if required) to execute a supplemental deed at the like cost in such form, and to contain such covenants by the mortgagor and provisions as the bank or the persons deriving title under them may reasonably require for the purposes of the aforesaid security (n). **Undertaking to execute a legal mortgage (m).**

(m) This undertaking will not render the security liable to stamp duty at the higher rate: *Alpe*, 6th ed. p. 181. A deposit of title deeds *ipso facto* confers on the mortgagee a right to call for a formal mortgage: *Parker v. Housefield*, 2 My. & K. 419. The Inland Revenue could not successfully claim duty at the higher rate by reason only of an agreement defining existing rights.

(n) No power of attorney is given to execute the required deeds, as such a power would, it is conceived, have to be under seal, and that would render the mortgage liable to the higher rate of duty: **Powers of attorney.**

MORTGAGES. [Add agreement as to insurance of buildings, if required
Insurance. (Wolst. pp. 53—54), omitting last paragraph as to the statutory right to insure.]

AS WITNESS, &c. (o).

THE SCHEDULE ABOVE REFERRED TO.

PART I.

(To contain particulars of the deeds relating to the title paramount to the estate conferred by first registration.)

PART II.

(To contain particulars of the land certificate.)

Section V.

XII.

SETTLEMENT
OF REGISTERED
LAND
ON TRUST FOR
SALE.
Parties.

SETTLEMENT OF REGISTERED FREEHOLD LAND
AS PERSONAL ESTATE (p).

THIS INDENTURE, made &c., between [*the husband*], of the first part [*the wife*], of the second part, and [*two*

see 1 K. & E., 5th ed. p. 187, note. As to powers of attorney, see L. T. R., 1898, r. 159, and note thereto.

(o) This agreement must not be taken under seal. As to sub-mortgages by deposit, see L. T. R., 1898, r. 126.

No separate conveyance on trust for sale required.

Settlement of registered charge.

(p) There is no advantage in placing the trust for sale in a separate deed, as the register itself keeps the trusts of the settlement off the title, except where a lease or an easement is to be granted. A settlement of a registered charge will be in the form of a settlement of stock; the charge will be transferred on the register to the trustees. Inasmuch as the trustees will have power to create a sub-mortgage by deposit, it is conceived that the practice will be to enter the like restriction as is referred to in this Precedent.

trustees] (which two last-named persons are hereinafter SETTLEMENTS.
called "the trustees"), of the third part.

WHEREAS a marriage has been agreed upon and is Recitals.
Agreement
for marriage.
intended to be solemnized between the said [*husband*] and
[*wife*].

AND WHEREAS the said [*husband*] is seised in fee simple Title to regis-
tered land.
free from incumbrances of the freehold land hereinafter
mentioned, which is registered under the Land Transfer
Acts, 1875 and 1897, in his name with an absolute [*or a*
possessory (*q*)] title.

AND WHEREAS, with a view to the settlement intended Deed of
transfer of
even date.
to be hereby made, the said [*husband*] has by a deed of
transfer bearing even date with these presents trans-
ferred (*r*) the said registered freehold land into the names
of the trustees. And the said deed of transfer contains an
application for the registration of the restriction [*and*
entry] following, that is to say:

(*Restriction.*) "No transfer, charge or lien by
deposit is to be made or created without the consent
of the said [*husband*] and [*wife*], or of the survivor of
them."

(*Entry.*) ["When after the death of the survivor
of the said [*husband*] and [*wife*] the number of joint
proprietors has been reduced to one, no registered dis-
position is to be made or lien by deposit created except

(*q*) Paramount estates, if any, should be got in by the settlor
prior to the settlement unless the settlement is made subject to
them: L. T. A., 1875, s. 8.

(*r*) The transfer being in consideration of marriage, is for valu- Variation in
prescribed
form of
transfer.
able consideration: see L. T. A., 1897, ss. 30, 32, note. The con-
sideration will be expressed to be "in consideration of the marriage
which has been agreed upon, and is intended to be solemnized
between A. B. [*the husband*], of &c., and C. D. [*the wife*], of &c.;
and to the prescribed form of transfer (L. T. R., 1898, Form 14)
should be added, "And I, the said [*wife*], approve of the said
transfer," which will be followed by the application for the proper
restriction and entry (if any).

- SETTLEMENTS.** under an order of the registrar after enquiry into title or an order of the Court (s).]
- Agreement for settlement.** AND WHEREAS upon the treaty for the said intended marriage it was agreed that such settlement should be executed as hereinafter contained.
- Testatum.** NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the said intended marriage, the said [*husband*], AS SETTLOR, with the approbation of the said [*wife*], hereby conveys unto the trustees
- Parcels.** ALL THAT, &c. [*registered description, with number and quality of title*].
- Habendum.** To HOLD unto the trustees in fee simple.
To THE USE of the said [*husband*] in fee simple until the said intended marriage shall be solemnised, and after the solemnisation thereof, To THE USE of the trustees in fee simple upon the trusts hereinafter declared, that is to say :
- Trust for sale.** IT IS HEREBY AGREED that the trustees, or the survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being of these presents (hereinafter called the trustees or trustee), shall, after the solemnisation of the said intended marriage, sell the said premises, or any part or parts thereof, but so that during the joint lives of the said [*husband*] and [*wife*], or the life of the survivor of them, every sale be

Dispositions by sole trustee.

(s) As to this entry, see L. T. R., 1898, r. 185, Form 52. It should not be used unless a sole trustee has no power to sell: see text, *infra*. The object is to protect the infant children of the marriage against, particularly, an improper charge or mortgage by deposit by a sole trustee. This Precedent (see text, *infra*) gives the trustees power to mortgage for certain purposes. Even if this power is not given, an inhibition against mortgages by deposit would be inconvenient, for it would fetter the completion of a sale by the trustees. The restriction against a mortgage by deposit during the lifetime of the husband and wife will not create any inconvenience, as they will consent to the sale.

made only with their, his, or her consent in writing. SETTLEMENTS.
 [(t) And so also that after the death of the survivor of
 them no sale be made under these presents, unless there is
 more than one trustee for the time being hereof.]

AND IT IS HEREBY AGREED that the trustees or trustee shall stand possessed of the net money to arise from sales under the trust for sale aforesaid, and also of the rents and profits of the premises until sale upon the trusts, and subject to the powers and provisions hereinafter declared concerning the same (that is to say) : It is HEREBY AGREED that the trustees or trustee shall, with the consent of the said [*husband*] and [*wife*] during their joint lives, or of the survivor of them during his or her life, and after the death of both at the discretion of the trustees or trustee, invest the net money to arise from any sale made under the trust for sale hereinbefore contained in the names or name of the trustees or trustee in manner following (that is to say) :

Proceeds of
sale to be held
upon trusts
afterwards
declared.

Trust to
invest pro-
ceeds of sale.

In any investments for the time being authorised as investments for trust money, or on real or leasehold securities in England or Wales (whether by way of registered charge or otherwise), and also in or on the stock or securities not payable to bearer of any British colony or dependency, or of any foreign government or state or municipality, and also in or on the stock or shares ordinary or otherwise, or the bonds, mortgages, debentures or debenture stock, or guaranteed or preference stock, not payable to bearer of any public or private company trading or otherwise carrying on business in Great Britain, India, or any British colony or dependency [which shall have paid dividends upon its ordinary capital at the rate of at least £3 per cent. per annum for at least three years prior to the date of investment, or of any railway, canal, dock, harbour, paving, gas or water company, carrying on business in Great Britain, India, or any British colony or dependency, or

Investment
clause.

(t) See last note. As a general rule, it is conceived that this restriction will be omitted.

SETTLEMENTS. of any incorporated company in Great Britain, established for the purpose of giving guarantees, executing trusts, or investing money in the purchase or on mortgage of land in Great Britain or elsewhere], or on the security of any life interest in any real or personal property, together with an insurance on the life, with power for the trustees or trustee from time to time, with the like consent or at the like discretion, to change such investments for others of a like nature.

Trusts of investments.

AND IT IS HEREBY AGREED that the trustees or trustee shall stand possessed of the said investments (hereinafter called the trust fund) and the annual income thereof upon the trusts, and subject to the powers and provisions following, namely. [*Insert usual trusts and powers: Wolst. pp. 71 et seq.*]

Trusts for husband, wife and their issue.

Application of rents until sale.

AND IT IS HEREBY AGREED that until sale of the premises the trustees or trustee shall hold or apply the net rents and profits thereof (after payment thereof of all rates, taxes, payments for insurance, repairs, and other outgoings, which any tenant or other person is not liable to pay) upon and subject to the same trusts and powers as are hereinbefore declared concerning the annual income of the trust fund.

Power to postpone sale.

AND IT IS HEREBY AGREED that the premises, or any part thereof, may be retained unsold so long as the trustees or trustee think proper, but shall be deemed personal estate and shall devolve as such.

Power to lease and other powers by reference to the Settled Land Acts.

AND IT IS HEREBY AGREED that subject to any order made under section 7 of the Settled Land Act, 1884, the trustees or trustee in reference to the premises, shall with the like consent, or at the like discretion as aforesaid, have and may exercise all the powers of or incidental to leasing, exchanging, mortgaging and partitioning, and all other powers which by the Settled Land Acts, 1882 to 1890, are conferred on a tenant for life in possession of land (u). [Provided always that nothing herein contained is to

(u) This Form is useful as conferring on the trustees powers uniform with those of a tenant for life under a strict settlement.

authorise any disposition of the premises, otherwise than ^{SETTLEMENTS.} by way of lease by a sole trustee after the death of the survivor of the said [*husband*] and [*wife*] (*v*).]

[*Add power to apportion* (Wolst. p. 92); *to employ* ^{Various powers.} *agents* (*ib.*, p. 94); *for professional trustee to charge* (*ib.*, p. 94); *and power to appoint new trustees*: *ib.*, p. 94.]

IN WITNESS, &c. (*w*).

(*v*) See note (*s*), *supra*.

(*w*) No form is given of a strict settlement of real estate, as no ^{Settlements} alteration is required in the common Forms used for unregistered (realty). land, except as to the recitals of the transfer (if any) to uses in the prescribed Form, and of the transfer (if any) of the leaseholds to the tenant for life: and see L. T. A., 1897, s. 6; L. T. R., 1898, rr. 71, 81, and notes thereto.

APPENDIX.

CONVEYANCING BILL.

DETAILED MEMORANDUM.

THIS Bill has been drafted by Mr. E. P. Wolstenholme, assisted by Mr. B. L. Cherry, on instructions of the Council of the Incorporated Law Society of the United Kingdom, and its object is to make the title to land approximate as nearly as circumstances permit to the title to stock, and to obtain the same advantages as would be secured under as good a system of registration of title as may be devised, without the disadvantages incidental to a register of owners. It is claimed that, in doing this, no new principle or rule of law is introduced, while much technical law (both common law and statute law) is rendered obsolete as regards purchasers and mortgagees.

In the case of stock, the entire interest must be transferred. Stock cannot be divided up into particular estates and remainders, which must be created only by way of trust. Accordingly the Bill prohibits the division of a fee simple into particular estates and remainders. This principle applied to land is not new; it already exists in the case of a term of years which cannot be conveyed to A. for life with remainder to B.

It is necessary in settling leaseholds, or a sum of stock, that they be vested in trustees. The Bill provides against the necessity of vesting land in trustees by enabling the estate in the land to remain in the tenant for life with a restriction on sale, except under the Settled Land Acts, whenever trustees for the purposes of those Acts are named in the conveyance upon trust, and, as in case of land conveyed on trust for sale and stock at present, the limitations under the settlement will be equitable only. This fits in with the scheme and policy of the Settled Land Acts, under which, though the tenant for life has not the fee, he has power to convey it, provided the purchase-money is paid to the trustees, or into Court, and for the purpose of conveyance he practically has the fee simple; and the refusal of a trustee to convey is not material.

But, unlike the case of stock, there must be power to create

other interests in land besides the fee simple. The Bill, therefore, allows the creation of terms of years absolute, and rents, easements, &c., in fee, or for a term absolute. All these are made subject to the same principles as the fee simple, and cannot be divided into particular estates and remainders, involving evidence of death, failure of issue, &c. The whole fee or term must be transferred, and a purchaser will be concerned only with this whole fee or term.

Under the Bill, each owner of a fee or a term will have an absolute power of disposition, similar to the power of sale now given by statute to mortgagees, and can make a complete title. This removes all trusts from the title, thus reducing it, so far as regards a purchaser, to a series of simple transfers of the absolute interest.

As to the Provisions of the Bill.

The Bill divides interests in land into three kinds: "estates," "fiduciary rights," and "paramount interests." "Estates" are the only interests which are the subject of transfer as between vendor and purchaser, and the estate owner will have an absolute power of disposition, and estates only will appear in the abstract of title. "Fiduciary rights" are equitable ownership rights, which will not in any way affect a purchaser, or be investigated by him, whether they appear or not on the title. It is thought best to use a new term to distinguish these ownership rights from the old term "trust."

An estate includes only a fee simple, or a term of years absolute. The estate may be in the land, or in a rent-charge, or an easement; and may be either legal or equitable.

Settlements.

The Bill would be very short but for the necessity of providing for settlements. It is, however, essential to the scheme of the Bill that there should always be an estate owner capable of making a title to a purchaser. As an estate owner will have an absolute power of disposition, there must be some means of preventing him from wrongfully parting with his estate, if only to give effect to legal processes. With this object, a check is provided by cautions and inhibitions, which under the provisions of the Bill will not cause any more trouble to the purchaser than writing a letter and getting an answer.

Settlements of freehold land will be made by conveying the fee to the tenant for life, making him actual owner instead of having, as at present, a mere power to convey; but he will not be able to convey unless the purchase-money is paid either to the Settled Land Act trustees or into Court. On his death his real representative will dispose of the fee, or assent to its passing to the proper person—that is, either to the next

tenant for life, with a proper appointment of trustees, or to the tenant in tail in possession, who has barred his estate tail, or to a devisee or heir. The limitations of the settlement will be equitable, and they ought to be declared by a separate deed, as is now done in case of money arising under a trust for sale.

As in the case of stock, the real representative, before transferring the fee to the person entitled, will have to see that all charges prior to his fiduciary right are satisfied; but on transferring to a tenant for life he need pay no regard to charges which can be over-reached under the powers of the Settled Land Acts; but in this case the conveyance will contain an appointment of trustees for the purpose of those Acts.

After the death of a tenant for life the abstract of the subsequent title will consist merely of the conveyance to him, probate of his will or letters of administration to his estate, and the conveyance or assent by his real representative to the tenant in tail who sells, with, if there are more tenants for life than one, the intermediate conveyances or assents by their real representatives. The proofs of marriages, births, deaths, failure of issue, and other matters of pedigree, showing the title of the tenant in tail, and also his disentailing deed, will be immaterial.

The result will be that, as regards transactions taking place after the commencement of the Act, no evidence of title will be required by the purchasers except documents conveying or vesting the estate.

Existing Settlements.

As regards existing settlements, the estate of a tenant for life of full age is by the Bill enlarged into a fee simple or other the estate the subject of the settlement, and then the position is the same as under a settlement made after the Bill takes effect.

The rights of purchasers and mortgagees of particular estates under existing settlements are preserved, so that if (for instance) a reversionary life estate has been conveyed to a mortgagee, he will still retain this legal estate for life, and the enlarged estate will be subject to it.

Absolute Power of Disposition.

The estate owner, having an absolute power of disposition, will convey free from all charges affecting his estate, and none of the present searches will be required as regards liabilities arising after the commencement of the Act, except for lands improvement, rent-charges (the register for these may be conveniently removed to the land registry); and, as regards cautions and inhibitions, the vendor will produce a certificate that none are in force.

Further, when an equitable owner obtains a conveyance of

a prior estate, he becomes owner in respect of that prior estate, and can make a complete title by means of it, and his former equitable estate ceases to be part of the title; and if he obtains the legal estate every equitable estate behind it becomes wiped off the title.

Real Representative.

The Bill provides that the executor or administrator shall be the real as well as personal representative, and repeals and replaces the corresponding provisions in the Land Transfer Act, 1897, which, it must be admitted, were not only defective (*see 42 Solicitors' Journal*, pp. 42, 61, and 179), but liable to give rise to considerable injustice. Especial care has been taken to give effect to the manifest intention of those provisions, and at the same time to facilitate the proper working of that Act in connection with registered land.

The power contained in section 4 of that Act to appropriate land in satisfaction of a legacy is not made to take effect in any case except where the persons entitled to the residuary estate are all *sui juris* and ascertained. It has therefore been thought advisable to replace that section by a clause giving full power to appropriate subject to sufficient notices being served.

As to Cautions and Inhibitions.

As there is constituted, as proposed by this Bill, an estate owner, with absolute power of disposition, who can defeat all equities, there will be no possibility of making a satisfactory security on those equities, unless there is power to put some check on his dispositions analogous to a distringas on stock, and without some check there will be an end to a large class of business now transacted. The Bill therefore sets up a scheme of cautions and inhibitions similar in many respects to that which is in force under the Land Transfer Acts.

Cautions will drop after fourteen days from warning, by registered letter, to the cautioner.

Returns to searches may be obtained by post.

No lists are to be published, under a penalty.

Cautions are to be lodged before twelve o'clock at noon, and, if not, to be considered as lodged the next day, excluding Sunday, Christmas Day, &c., and are not to have any effect for two clear days from day of being lodged, excluding Sunday, &c. A purchaser can then ascertain that there is no caution, and will have three clear days from the date of certificate that there is no caution or inhibition wherein to complete before any caution can take effect, and attendance at the registry to complete will be unnecessary.

An inhibition will be the same as a caution, but only put on with the consent of the person restrained, or by Order of Court, and will not drop at the end of the fourteen days, but

only with consent of the person who inhibits, or by Order of Court.

If a cautioner requires to enforce his claim, he will apply for an injunction, and for an Order of the Court enabling him to lodge an inhibition.

The present *lis pendens* register is almost identical with the Caution and Inhibition Register as proposed by the Bill, the *lis pendens* register being a register of actions commenced, and the Caution and Inhibition Register being a register of claims on which actions may be, or have been, commenced. The Caution and Inhibition Register imposes no greater onus in the way of search than exists at present under the *lis pendens* register.

The system of cautions and inhibitions will enable the present onerous searches to be abolished, so far as regards liabilities arising after the commencement of the Act; but lands improvement rent-charges must still be allowed priority, and a search for them and for liabilities existing before the commencement of the Act will still remain necessary.

Provision is made to enable notices under cautions to be sent to a firm of partners as well as to the cautioner, so that a cautioner may obtain ample security notwithstanding that he may be called abroad. The registrar will send the notice.

The fees for cautions and inhibitions should be fixed with the object only of clearing the working expenses of the register.

Immediate Effect of Bill.

It will be seen that this Bill has an immediate effect on titles much more extensive than the Land Transfer Acts. Those Acts will not in any way simplify the title to land in settlement until a sale; and the land, unless sold under the Settled Land Acts, would remain governed by the present system till a bar of the entail and sale, notwithstanding intermediate mortgages; so that for many years to come all matters of pedigree under settlements, including not only settlements existing at the time of the commencement of the Land Transfer Act, 1897, but also those afterwards made, and all mortgages would remain part of the title. Under the Bill now proposed all settlements, existing as well as future, are brought under the new system, and no proof will be required of any matter of pedigree arising after the commencement of the Act, except as to deaths, of which probate or letters of administration will be sufficient conveyancing evidence. This is clearly shown by the epitome of specimen abstracts contained in the First Schedule to the Bill.

Death Duties.

If the Government assent to the clause as to death duties, a purchaser will take free from all such duties. It is conceived

that the revenue will not in any way suffer by such assent in consequence of land being made to vest in the real representative, who will be personally liable to see to payment of duties, and, moreover, the Government can be protected by a caution. This is the existing principle as regards stock and also as regards land held on trust for sale; further, a sale under the Settled Land Acts or under a power, frees the land from succession duty.

Changes in the Present Bill.

The present Bill gives a power to the real representative to assent in writing to the land passing to the heir, devisee or person entitled under a settlement so as to avoid the necessity for a deed in those cases where, under the existing law, the land would pass without one. This will also have the effect of leaving the position of stamp duty unaffected.

With the exception of the amendments of the Settled Land Acts and the Married Women's Property Act, rendered advisable by recent decisions, and of the power to assent, this Bill is the same in substance as the corresponding Bill of 1897.

Amendments.

The decisions in *Bates v. Kesterton*, 1896, 1 Ch. 159; *Harkness and Allsopps' Contract*, 1896, 2 Ch. 358; *Stevens v. Trevor Garrick*, 1893, 2 Ch. 307, and cases there cited; and *Re Tibbits' S.E.*, 1897, 2 Ch. 149, are intended to be met by the amending clauses in Part IX. of the Bill. The amendments of the Land Transfer Act, 1897, Part I., in connection with the real representative, will be found under that heading.

Generally.

The creation of a security by deposit of deeds for securing a current account or otherwise, is not only not interfered with, but will be facilitated.

No search for cautions or inhibitions is required before a further advance is made.

No alteration is made in the devolution of beneficial interests.

A separate Bill, it is suggested, might provide that all matters for search which now require re-registration every five years should not be re-registered, so that at the end of five years all present searches would cease.

Any objection to the principle of the Bill may be met by the answer that the principle is already in force as regards stock.

CONVEYANCING BILL.

ARRANGEMENT OF CLAUSES.

PART I.—PRELIMINARY.

1. Short title. Commencement. Copyholds, &c., excepted. Extent.

PART II.—DEFINITIONS.

2. "Land." "Settled Land." "Possession." "Rent." "Instrument." "Disposition." "Dispose of." "Settlement." "Will." "Settled Land Acts." "Tenant for life within the meaning of the Settled Land Acts." "Purchaser." "Notice." "Cautitioner" and "Inhibitor." "Person restrained." "Registrar." "Court." "Prescribed."
3. "Estates." "Fiduciary right." "Estate owner." "Paramount interest."

PART III.—TRANSFER AND CREATION OF ESTATES.

4. Transfer and creation of estates.

PART IV.—FIDUCIARY RIGHTS.

5. Creation of fiduciary rights.

PART V.—DISPOSITIONS.

6. Estate owner to have absolute power of disposition.
7. Effect of disposition of an estate to a purchaser.
8. Effect of a disposition not transferring an estate.

PART VI.—SETTLEMENTS.

As to Settlements executed after the commencement of this Act.

9. Mode of making settlements made after this Act.

Appointment of New Trustees.

10. Provisions as to appointment of new trustees.

As to Settlements executed before the commencement of this Act.

11. Provision as to settlements made before this Act.

As to Settlements by way of Disposition on Trust for Sale.

12. As to dispositions on trust for sale.

PART VII.—REAL REPRESENTATIVE.

13. Creation of and provisions respecting real representative.
14. Effect of assent or conveyance by real representative.
15. Possession may be given before assent.
16. Appropriation of property by real or personal representative in satisfaction of legacy or share.

Amendment of Parts of Land Transfer Act, 1897.

17. Repeal and amendment of parts of Land Transfer Act, 1897.

APPENDIX.

PART VIII.—CAUTIONS AND INHIBITIONS.

Register.

18. Register to be kept at Land Registry Office.

Cautions.

19. Caution may be lodged.
20. Form of and provisions as to cautions.

Notices under Cautions.

21. By whom notice may be given. Form of request or notice.

Inhibitions.

22. Inhibition may be lodged by consent or order of Court. Form and signature of inhibition.

Cautions and Inhibitions.

23. Effect of caution or inhibition: its duration and vacation.
24. Dispositions to be subject to interests of cautioners or inhibitors.
25. A caution or inhibition not to affect priorities.
26. No list of cautions or inhibitions to be printed or published.
27. Vendor to be bound to vacate cautions and inhibitions.

Searches.

28. Requisitions for searches may be made.

Rules.

29. Rules.
30. Rules as to fees.

District Registries.

31. Establishment of county registries.
32. Provisions of Act as to principal registry to apply to county registry.

PART IX.

Amendment of the Married Women's Property Act, 1882.

33. Dispositions of trust and mortgage estates by married women.
34. Amendment of Section 19 of the Married Women's Property Act, 1882.

Amendments of the Settled Land Acts.

35. Trustees of instrument creating the estate for life to be trustees of the whole settlement.
36. Married woman restrained from anticipation to have powers of tenant for life.
37. Amendment of section 16 of the Settled Land Act, 1890.

PART X.—EXCEPTIONS AND RESERVATIONS.

38. Exceptions and reservations.

PART XI.—MISCELLANEOUS.

39. Estate owner to be liable for a wrongful disposition.
40. Covenants may be made binding on estates.
41. Interests in land to be disposed of in like manner as before the Act.
42. Notice of a disposition where there is a common title.
43. Purchasers not to be liable to claims for duty or Crown debts.
44. Estates vested in tenants in common.
45. Instruments and abstracts of title.

SCHEDULES.

A

BILL

INTITLED

An Act to simplify the Title to and the Transfer of Land.

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

The notes on the Bill are not exhaustive, but it is hoped they are sufficient to enable the reader to find his way about and to master the principle of the Bill.

In the notes "c." means clause.

PART I.

PRELIMINARY.

1.—(1) This Act may be cited as the Conveyancing Act, Short title.
1898.

(2) This Act shall come into operation on the first day of January, one thousand eight hundred and ninety-nine. Commence-
ment.

(3) This Act, except as otherwise expressly provided, applies Copyholds,
to land of every tenure, including customary fee simple land &c., excepted.
passing by deed or by deed and admittance, but not including
any other land of copyhold or customary tenure.

(4) This Act does not extend to Scotland, nor, except as Extent.
otherwise expressly provided, to Ireland.

The Bill does not, and could not readily be made to apply to ordinary Copyholds.
copyholds. This is not very material, as copyholders have statutory
power to enfranchise, and may thus obtain the benefits of the Bill.

For express provisions as to copyholds, see co. 33 and 36, *infra*.

Part IX., which consists of amendments of the M. W. P. A., 1882, Ireland.
and of the S. L. As., extends to Ireland.

PART II.

DEFINITIONS.

2. In this Act, unless a contrary intention appears—

(1) "Land" includes mines, minerals, and other substances "Land."
in or under land; also a manor, an advowson, and a rent and
other incorporeal hereditaments, and an easement, right,

C. 2 (2) (3)
(4) (5) (6) (7)
(8) (9) (10).

DEFINITIONS.

"Settled
land."

"Posses-
sion."

"Rent."

"Land."

privilege or benefit in, over, or derived from land; and also an undivided share in land:

(2) "Settled land" has the same meaning as in the Settled Land Acts:

(3) "Possession" includes receipt of rents and profits:

(4) "Rent" includes a rent service or a rentcharge, or other rent, toll, duty, royalty, or annual or periodical payment, in money, or money's worth, issuing out of or charged upon land:

The definition of land in Interpretation Act, 1889, s. 3, is by sub-c. (1) extended with a view to enable "estates" (c. 3 (1), *infra*) to be created in those rights and interests which are usually the subject of dealings between vendor and purchaser. "Land" includes a "rent": *see* sub-c. (4).

For definition of "Settled Land Acts," *see* sub-c. (9), *infra*.

"Instru-
ment."

(5) "Instrument" means inclosure award, vesting order of any court, grant, appointment, mortgage, vesting declaration, assent, or other conveyance, demise, lease, agreement, declaration of trust, and will: and every other deed or writing and every verbal contract effectual in law, and every contract implied by law, whereby a transfer of land, or a transfer or creation of an interest in land, can be effected:

Why neces-
sary to
include verbal
contract.

Instrument will include "every verbal contract effectual in law . . . whereby a transfer of land or a transfer or creation of an interest in land can be effected." This is necessary to enable a lease for three years or less to be created by a parol agreement as at present, or to preserve the rights of leasees holding under a verbal agreement for a lease with part performance.

The remaining definitions contained in this clause will be referred to, and, where necessary, discussed, when they occur in the Bill.

"Disposi-
tion."

"Dispose
of."

"Settle-
ment."

45 & 46 Vict.
c. 38.

"Will."

"Settled
Land Acts."

"Tenant for
life within
the meaning
of the Settled
Land Acts."

(6) "Disposition" means every transfer of land, and every transfer or creation of an interest in land, by an instrument; and "dispose of" has a corresponding meaning:

(7) "Settlement" means a disposition whereby land, or any interest in land, is made to devolve on two or more persons in succession; and includes a settlement existing or deemed to be existing within the meaning of the Settled Land Acts as extended by this Act, except a settlement deemed to be existing under section sixty-three of the Settled Land Act, 1882; and "settled" has a corresponding meaning:

(8) "Will" includes codicil:

(9) "Settled Land Acts" means the Settled Land Acts, 1882 to 1890, and any Acts amending, extending, or consolidating the same:

(10) "Tenant for life within the meaning of the Settled Land Acts" means and includes not only a tenant for life as defined by the second section of the Settled Land Act, 1882, but also includes persons who under sections fifty-eight and sixty-one (as extended by this Act) of the Settled Land Act, 1882, have the powers of a tenant for life under that Act; but

does not include an infant, nor a person who under section sixty-three of that Act is to be deemed tenant for life, whether having leave to exercise powers under section seven of the Settled Land Act, 1884, or not: CC. 2 (10) (11) (12) (13) (14) (15) (16), 3 (1).

(11) "Purchaser" includes a mortgagee, or a lessee, or any other person who, for valuable consideration, acquires land or an interest in land: DEFINITION 3. "Purchaser."

(12) "Notice," with reference to a purchaser, includes actual as well as constructive notice: "Notice."

(13) "Cautioner" and "inhibitor" mean respectively the person by whom a caution or inhibition is herein expressed to be lodged; and "person restrained" means the person against whom a caution or inhibition is lodged: "Cautioner" and "Inhibitor."

(14) "Registrar" means the registrar appointed under the Land Transfer Act, 1875: "Person restrained." "Registrar." 38 & 39 Vict. c. 87.

(15) "Court" means the High Court of Justice, and also the Court of Chancery of the County Palatine of Lancaster or Durham, or the County Court, where those respective Courts have jurisdiction: "Court."

(16) "Prescribed" means prescribed by general rules made pursuant to this Act. "Pre-scribed."

3. Also in this Act, unless the contrary intention appears—

(1) "Estate" means and includes only— "Estates."

(i.) an estate in fee simple; or

(ii.) a term of years absolute in land, with or without impeachment for waste; or

(iii.) an equitable interest either under a trust or right of redemption or otherwise, which is equivalent in equity to an estate in fee simple, or to a term of years absolute in land;

but does not include any other interest in land, nor any power to dispose of land otherwise than in right of ownership of an estate:

This clause divides interests in lands into three kinds: "estates," "fiduciary rights," and "paramount interests." Division of interests in land.

The estates are the only subject of transfer as between vendor and purchaser (c. 2 (11)), and will, with a few paramount interests which are not estates (c. 38 (viii.)), alone appear in an abstract of title. 1. Estates.

The fiduciary rights are the equitable ownership rights, which will not in any way affect a purchaser or be investigated by him, whether they appear or not on the title, and will be wiped off the title when he purchases. 2. Fiduciary rights.

The paramount interests are the estate rights and interests, subject to which, and the rights protected by cautions and inhibitions, an estate owner will have absolute power of disposition. 3. Paramount interests.

For "land," see c. 2 (1) (4), and note thereto.

It is essential that an equitable as well as legal fee or term should be included in the definition of "estate," otherwise, where a purchaser (including a mortgagee, &c.: see c. 2 (11)) obtained only an equitable estate, he would not necessarily obtain a good title against beneficiaries. A strict title would always have to be shown to the legal estate, now frequently ignored. The common form condition of sale, that a purchaser Reasons for including equitable fees and terms in "estates."

C. 3 (1) (2) (3)
(4).

DEFINITIONS.

"Fiduciary
right."

should himself get in the legal estate, would mean an insufficient title; also, the owner of an equity of redemption could not make a title on a second mortgage. Further, if an attempt was made to deal only with the legal estate, all the provisions of the Bill might be evaded.

(2) "Fiduciary right" means and includes every interest in or power over land which is not an estate nor a paramount interest :

Protection of
fiduciary
rights.

Powers over
land.

Fiduciary rights may, where required, be protected either by cautions and inhibitions (cc. 18—28), or by Settled Land Act trustees (c. 9 (vi.) (x.)) : and see c. 39, *infra*.

All powers of disposition over land are fiduciary rights, except :

- (a) Power to dispose in right of ownership of an estate : c. 3 (1), *supra*.
- (b) Powers within sub-c. (4) (iii.), *infra*.

"Estate
owner."

"Paramount
interest."
27 & 28 Vict.
c. 114.

(3) "Estate owner" means the person in whom an estate is vested :

(4) "Paramount interest" means and includes—

- (i.) an estate or a rent (including a rentcharge created under the Improvement of Land Act, 1864, or any similar Act), or an easement or a right, which, in its origin, has priority over the estate of the estate owner, and subject to which he holds his estate ; and
- (ii.) the estate or right in respect of occupation of every actual occupier of land ; and
- (iii.) all powers, rights, and interests existing at the time of the commencement of this Act, and excepted or reserved out of the operation of this Act, or created under any power so excepted or reserved ;

but does not include any charge or liability placed upon nor any receivership constituted of an estate after the commencement of this Act, by force of any statute already passed or hereafter to be passed, or under any rule or operation of law, nor a charge created by any instrument and not secured by a disposition of an estate ; and "paramount estate" means every paramount interest which is an estate.

Paramount
interests or
estates.

The definition is extended by c. 11 (v.), *infra*.

For "rents," see c. 2 (4).

As to sub-c. (i.), the estate of a mortgagee or of a trustee cannot be over-reached by conveyance of the mortgagor or *cestui que trust*. Also, an estate owner will convey, subject to any term of years, rentcharges (including lands improvement rentcharges), easements, &c., which in their origin have priority to his estate.

"Or any similar Act" : see Limited Owners' Residences or Reservoirs, &c. Acts (33 & 34 Vict. c. 56 ; 34 & 35 Vict. c. 84 ; 40 & 41 Vict. c. 31).

"In its origin." The paramount interests need not have been created at a date prior to the estate of the estate owner, but by their creation must have been made paramount to the estate, *e.g.*, a lease by the estate owner.

"And subject to which," &c. These words qualify the sub-c. ; without them it would not be quite clear that a mere charge on the estate was not paramount.

The rights of occupiers must clearly be protected. The Statutes of Limitation and the Prescription Act are also saved: c. 38 (x.), *infra*.

As to sub-c. (iii.) (*see* c. 38, *infra*), it is most important to bear these exceptions in mind in the construction of the Bill: *see* also cc. 24, 25, 41.

Paramount interest does not include, for example, an equitable charge created after the Act and not protected by an estate, nor a *lis pendens*, &c., registered after the Act.

CC. 3 (4), 4 (1)
(2).

TRANSFER AND
CREATION OF
ESTATES.

Rights of
occupiers.
Exceptions
and reserva-
tions.
What not
included in
paramount
interest.
Transfer and
creation of
estates.

PART III.

TRANSFER AND CREATION OF ESTATES.

4.—(1) An estate may be disposed of by any instrument proper for the purpose so as to transfer (subject to paramount interests, if any) the whole of that estate in the land, or in any mines or minerals, or in an undivided share thereof, or so as to create out of that estate another estate, either by way of grant of a term of years, or of a rentcharge, or of an easement, right, privilege, or benefit in or over or derived from land or otherwise arising out of land; or so as to transfer such whole estate subject to the creation thereof, by the same instrument, of another estate, and so as, in any case, to reserve a rent service where permissible by law; but an estate shall not be disposed of in any other manner.

Permits an estate (c. 3 (1)) in land (c. 2 (1) (4)) to be dealt with by an instrument (c. 2 (5)) practically in the same way as at present, provided that, either the whole estate is transferred, or another estate only is created: *see* also Second Schedule, Form No. 5.

Interests for lives and other particular estates and remainders are thus rendered obsolete as regards purchasers; and leases can only be made for a term of years absolute, except under c. 38 (viii.), *infra*; a covenant for renewal in a lease made after the Act will confer a fiduciary right only: and *see* sub-c. (5), *infra*.

Particular
estates and
remainders
rendered
obsolete.

As to the effect of a disposition not transferring an "estate," *see* c. 8, *infra*.

As to restrictive covenants, *see* c. 40, *infra*.

As to death duties and Crown claims, *see* c. 43.

(2) On a disposition of an estate in fee simple there may be reserved thereout a perpetual rent, or rentcharge in fee simple, with or without a power of re-entry on default in payment thereof or on breach of covenant, and the reservation shall operate to reserve and create a rentcharge in fee simple, issuing out of the estate conveyed, subject to paramount interests, and having incidental thereto all the powers and remedies for recovery thereof conferred by section forty-four of the Conveyancing and Law of Property Act, 1881; 44 & 45 Vict. c. 41. and the rentcharge so created shall vest, in fee simple, in the person to whom the same is expressed to be reserved.

Confers a power to create a rentcharge in fee simple by reservation: *see* Second Schedule, Form No. 7.

This sub-c. follows S. L. A., 1890, s. 9, and meets the case of *Bradshaw v. Lawson*, 4 T. R. 443.

Power to
reserve a
rentcharge in
fee.

C. 4 (3) (4) (5)
(6).

TRANSFER AND
CREATION OF
ESTATES.

(3) Every power of appointment given by an instrument, and every power to convey otherwise than as estate owner given by will, and every shifting use, or executory limitation, or other like provision contained in any instrument, and which, if valid, would or might prevent the estate of an estate owner, if and so far as not disposed of in his lifetime, from devolving at his death on his real representative, shall, for the purpose of passing an estate, be absolutely void, but this sub-section does not affect the operation of a vesting declaration.

Powers of
appointment,
shifting uses,
&c., abolished
as regards
estates.

As regards instruments (c. 2 (5)) executed after the Act (c. 4 (6)), and for the purpose of passing an estate (c. 3 (1)), all shifting uses, or other like provisions which would prevent an estate not disposed of (c. 2 (6)) in the estate owner's lifetime from passing to his real representative (defined c. 13 (2)), are made void.

Thus a mere power given by will to sell the land is, as regards purchasers, abolished, but the real representatives (after payment of debts) will be bound to convey at the request of the persons to whom the power is given (*see* c. 39); a real representative is an estate owner: *see* c. 3 (3).

Again, a shifting use or executory limitation, in an instrument executed after the Act, is void, except for the purpose of creating fiduciary rights; as to such provisions contained in the will of a person who dies after the Act (*see* c. 9 (viii.), 13 (3) (10)); provision is made as regards other instruments executed before the Act: *see* c. 11 (1) (vi.), *infra*.

Vesting
declarations.

The power to make vesting declarations of an estate under T. A., 1893, on an appointment of a new trustee is preserved: cc. 2 (5), 9 (xvii.), 38 (i.) (ii.), 41, and First Schedule, Specimen No. 2.

(4) An estate shall not, by force only of any Statute (except as by this Act or by any reservation in this Act otherwise expressly provided) nor by force only of any rule or other operation of law, pass to any person except a real representative of the estate owner, or a survivor under a joint-tenancy, or a tenancy by entireties.

Effect of
general rule
that an
instrument is
necessary to
pass an
estate.

Under this sub-c. and sub-c. (1), *supra*, an instrument (c. 2 (5)) will be necessary (subject to the exceptions) to pass an estate; this renders unnecessary any evidence outside the abstract: and *see* c. 4 (1), *supra*; and c. 13 (6), *infra*.

As to the other exceptions in the Bill, *see* cc. 4 (5), 11 (i.) (ii.), and 38.

An instrument does not include Act of Parliament (c. 2 (5)), but statutory powers and existing rights are preserved: c. 38 (i.) (v.), *infra*.

Joint-tenancy
and other
exceptions.

(5) An estate may be made to cease at any time by re-entry for condition broken, and a term of years may be made to cease after notice in writing given under a power to determine the same, or may cease by operation of law; but an estate shall not be made to cease in any other manner.

(6) This section does not apply to any instrument not testamentary executed before nor to the will of a person who dies before the commencement of this Act.

Right of
re-entry and
satisfied
terms.

Sub-c. (5) preserves the right to limit a condition at common law whereby the estate may revert to the donor (*e.g.*, in the grant of a fee farm rent); enables a lease to be determined by notice; and preserves

the effect of the Satisfied Terms Act. And as to the Statutes of Limitation, *see* c. 38 (x.), *infra*.

The clause does not apply to instruments executed before the Act, so that if there are any cases where an estate the subject of a "settlement" (c. 2 (7)) is not made to vest (c. 11 (i.) (ii.)) in "the tenant for life within the meaning of the Settled Land Acts" (c. 2 (10)), the subsisting limitations and powers must be allowed to take effect; but as to powers, and existing rights, *see* c. 38, *infra*.

CC. 4 (6), 5, 6,
7.

TRANSFER AND
CREATION OF
ESTATES.

Application of
Clause 4.

PART IV.

FIDUCIARY RIGHTS.

5. Fiduciary rights shall be deemed equitable interests in an estate, and may be created, or arise, and be transferred in like manner as equitable interests in land, but shall be capable of being enforced only against the estate owner who has been constituted trustee to give effect to such rights, and shall not be enforced against a purchaser whether he has notice of such rights or not.

Creation of
fiduciary
rights.

Fiduciary rights (c. 3 (2)) are to be enforced only against the estate owner who has been constituted trustee (c. 39) to give effect to them, and not against a "purchaser" (c. 2 (11)), whether he has "notice" (c. 2 (12)) of them or not.

These rights may be protected: *see* cc. 9, 11, 18—28.

As to frauds, &c., *see* c. 38 (ix.), *infra*.

As to what documents will not be produced to a purchaser, *see* c. 45, and First Schedule.

For a settlement of fiduciary rights, *see* Second Schedule, Form No. 2.

PART V.

DISPOSITIONS.

6. An estate owner shall have absolute power, by the like means and in like manner as before the commencement of this Act, to dispose of his estate as he thinks proper for all purposes subject only to the paramount interests (if any), and to the express provisions of this Act restrictive of his power of disposition.

Estate owner
to have abso-
lute power of
disposition.

"Paramount interests": *see* c. 3 (4), *supra*.

"For express provisions," *see* cc. 4, 9 (1) (vi.) (xiv.), 11 (iii.) (iv.) (v.), 12 (2) (6), 24, 38, 39, 41, 44 (2).

Restrictions
on absolute
power of
disposition.

7. A disposition by an estate owner in favour of a purchaser shall, to the extent of the estate of the estate owner, and except so far as is otherwise expressly provided by this Act, operate to pass to the purchaser the estate disposed of, subject to the paramount interests (if any), but discharged from all other estates, liabilities, rights and claims which, by force of any Statute or any rule or operation of law, affect the estate of the estate owner, and from all fiduciary rights (if any) affecting that estate; and the purchaser, whether having

Effect of dis-
position of an
estate to a
purchaser.

C. 7.
DISPOSITIONS.

notice or not of any such other estates, liabilities, rights or claims, or of any fiduciary rights, shall hold the estate disposed of to him freed from such other estates, liabilities, rights, or claims, or fiduciary rights, whether the disposition appears to be rightfully made or not.

Gives the effect of a "disposition" (c. 2 (6)) of an "estate" (c. 3 (1)) in favour of a "purchaser:" c. 2 (11). This is the most important section in the Bill.

"To the extent of the estate of the estate owner," that is, the fee or term of years absolute.

"Except so far as is otherwise expressly provided by the Act:" *see* note to last c.

"Operate to pass to the purchaser the estate disposed of," *e.g.*, a fee subject to redemption, or a term of years, or an easement, or an undivided share, &c. (c. 2 (1) (4), 4), for an estate.

"Subject to the paramount interests (if any):" *see* c. 3 (4), and note thereto.

Effect of conveyance by mortgagees.

"But discharged from all other estates," *e.g.*, the conveyance by a first mortgagee will discharge the land from the estates of the mortgagor, and of subsequent mortgagees; the conveyance by a second mortgagee will be free from subsequent mortgages, but will be subject to the estate of the first mortgagee, which is a paramount estate.

What searches abolished.

"Liabilities, rights, and claims, which by force of any statute, or any rule or operation of law, affect the estate of the estate owner." Thus, all searches are abolished so far as regards liabilities arising after the commencement of the Act, except for land improvement rentcharges (c. 3 (4)), and for cautions and inhibitions; equitable charges are also defeated, but existing rights are preserved, and the purchaser must see as to the custody of title deeds relating to the estate: c. 38, *infra*.

Equitable charges.

"And from all fiduciary rights (if any) affecting that estate": *see* cc. 3 (2), 5, 39.

Notice.

"And the purchaser, whether having notice or not of," &c.: *see* c. 2 (12).

"Whether the disposition appear to be rightfully made or not." A purchaser will not, in fact, know; he will only have notice that the disposition may be irregular; but, in view of the doctrine of notice, some stringent clause is necessary here.

Death duties and Crown claims.

This section must be read with c. 34, *infra*, which frees the land, in favour of a purchaser, from death duties, Crown debts, &c.

Frauds and mistakes.

See also c. 38 (ix.); the result is that a purchaser will not be concerned with any equity, though disclosed on the title, and will obtain a good title provided he is not party to a fraud.

Possession of land and of title deeds.

The rights of persons in possession of land are protected (cc. 3 (4) (ii.), 38 (x.)), so that a bare trustee could not easily commit a fraud, and in most cases he would not have the deeds: *see* c. 38 (vi.), *infra*.

Bill applies to leaseholds.

The title to leaseholds, as well as freeholds, will be simplified under the Bill, since the equities, including, in many cases, second and subsequent mortgages, will be wiped off a title on a sale: *see* c. 45, *infra*.

Object of clause.

The clause aims at rendering unnecessary the investigation by a purchaser of the power of disposition of his vendor; the purchaser is merely to see that he is dealing with the owner of "the estate" which is to be purchased; the importance, therefore, of the clause cannot well be over-rated.

Sales by municipal corporations, &c.

In the case of sales by municipal corporations and other bodies whose power of disposition is fettered by statute, the purchaser would, it is conceived, be safe in acting on a written statement of the vendor's solicitor that all the preliminary steps required by the statutory provisions had been complied with. Without some such assurance the good faith of the purchaser might be called in question.

It is conceived that there is no sufficient reason to include the case of municipal corporations, &c., in the exceptions in c. 38, *infra*.

8. A disposition by an estate owner purporting to transfer or create an interest in land which is not an estate, nor a leasehold interest determinable with life by this Act permitted to be created, shall not transfer or create any estate, but shall operate only as a declaration by the estate owner that his estate is to be held upon trust to give effect to fiduciary rights corresponding as nearly as may be with the interests which the disposition purports to transfer or create, and shall not operate in any other manner.

CC. 8, 9 (i).
DISPOSITIONS.
Effect of a disposition not transferring an estate.

A disposition hereafter purporting to transfer an interest in "land" (c. 2 (1)) which is not a fee simple, nor a term of years absolute, nor a leasehold within c. 38 (viii.), *infra*, will only create fiduciary rights.

This clause, taken with c. 45, *infra*, and the First Schedule, shows clearly what documents will be abstracted by a vendor: *see also* c. 27 (2).

Documents to be abstracted.

PART VI.

SETTLEMENTS.

As to Settlements executed after the commencement of this Act.

9. The following provisions shall have effect with respect to settlements made after the commencement of this Act, including the will of an estate owner dying after such commencement:—

Mode of making settlements made after this Act.

- (i.) A settlement of an estate shall be made only by means of a declaration of trust, which may be contained in an instrument, not testamentary, by which the disposition of the estate upon trust is effected, or more properly in a separate instrument, or may be made by a declaration of trust or by a devise (which devise shall operate as a declaration of trust) contained in a will:

"Settlement:" *see* co. 2 (7), 36 (2). The definition includes all strict settlements of land, and a settlement in the case of a tenant by the curtesy, but does not include a settlement on trust for sale.

"Settlement of an estate." This is to be distinguished from a "settlement of fiduciary rights;" though they ought to be made by separate instruments, it is necessary (to prevent serious consequences arising from a mistake) to permit them to be made by the same instrument.

A settlement of an estate cannot strictly be made by will. The will does not pass the estate which, under the Bill, devolves on the real representative, and he is bound to give effect to the settlement (*see* sub-c. (viii.), *infra*), and in the deed or assent for that purpose he will have to name the Settled Land Act trustees; if there are none, he should not convey before they are appointed by the Court.

For a form of Settlement of an estate, *see* Second Schedule, Form No. 1; of a disposition corresponding to a conveyance to the uses of a settlement, Form No. 3; and of a settlement of fiduciary rights, Form No. 2.

C. 9 (ii) (iii)
(iv).

SETTLEMENTS.

Successive
interests
under settle-
ments to be
fiduciary
rights.

Legal contin-
gent re-
mainders and
the rule of
remoteness.

Remainders
abolished as
regards
purchasers.

- (ii.) The successive interests created by or arising under the settlement shall take effect as fiduciary rights, and not otherwise :

For settlements of fiduciary rights, *see* Second Schedule, Forms Nos. 2 and 8.

Where there is a contingent remainder after a fiduciary right in tail, and that right would, but for the Bill, have been a legal estate in tail ; then, although fiduciary rights are to be deemed (c. 5) equitable interests in an estate, yet the contingent remainder would still, perhaps, be liable to be defeated if it did not vest on the determination of the fiduciary right in tail, inasmuch as the contingent remainder is "subject to the same rules of law and equity as if this Act had not been passed" : c. 41, *infra*. If this is so, it follows that, for the purposes of the rule of remoteness, legal remainders are not put on the same footing as executory limitations (*Abbiss v. Burney*, 17 Ch. D. 211), the Bill merely annexing to fiduciary rights (c. 3 (2)), which is a wider term than equitable interests, the incidents of those interests in order to constitute the estate owner a trustee (c. 39) in respect of them.

But assuming that legal remainders are, as it is conceived they are, abolished (*see* Second Schedule, Form 8) ; then, notwithstanding that the provisions as to future settlements are, in some cases, made applicable to past settlements (c. 11 (vi.)), this would not render a limitation in a past settlement void for remoteness which would have been good as a legal contingent remainder : c. 38 (v.) ; and *see* c. 11 (iii.).

Inasmuch as all remainders are to take effect as fiduciary rights, a purchaser (c. 2 (11)) will not be concerned with them.

- (iii.) The instrument of disposition of the estate may appoint trustees of the settlement for the purposes of the Settled Land Acts, and a will containing a declaration of trust or devise may name persons to be such trustees, and they shall accordingly be appointed as such trustees of the disposition upon trust of the estate when made for giving effect to the fiduciary rights under the will :

Duties of real representative where S. L. A. trustees are named in a will. The instrument of settlement which conveys the estate will always contain the appointment of Settled Land Act trustees ; the effect of appointing such trustees by the will of the settlor is that, after administration is complete, the real representative can either sell at the request of the tenant for life and pay the proceeds to such trustees, or convey the estate to the tenant for life (c. 9 (viii.)) of full age, and appoint the persons named in the will to be trustees of the settlement.

- (iv.) The instrument of disposition of the estate shall contain the power (if any) to appoint new trustees, and where that instrument does not contain any power to appoint new trustees, or any such power which the donee of the power is able and willing to execute, the estate owner shall have power, and shall be deemed the person nominated within the meaning of the Trustee Act, 1893, to appoint new trustees.

56 & 57 Vict.
c. 53.

Power to
appoint

This sub-c. and sub-c. (xvi.) prevent a purchaser having to go behind

the instrument disposing of an estate to ascertain whether the persons named as trustees are properly so appointed.

In default of express power, a power to appoint trustees is given to the estate owner. This will render unnecessary the common form express power for the tenant for life for the time being to appoint new trustees: and see c. 10 (2), *infra*.

If the power to appoint trustees contained in the settlement of fiduciary rights does not correspond with the power in the disposition of the estate, the estate owner, if he has the latter power, must see that the same persons are appointed trustees of both instruments: c. 39, *infra*; and see sub-c. (iii.), *supra*.

C. 9 (iv) (v)
(vi) (vii).

SETTLEMENTS.

trustees to be
contained in
disposition of
the estate.

- (v.) The number of the trustees for the purposes of the Settled Land Acts of a settlement shall not in any case exceed four; and where more than four persons are named as such trustees, the four first named shall alone be the trustees, and the other persons named shall not be trustees unless re-appointed:

The restriction to four trustees of a settlement (c. 2 (7)) is in accordance with the present practice in the case of stock. This will not prevent land from being vested in more than four persons.

Restriction on
number of
S. L. A.
trustees.

- (vi.) Where trustees of the instrument of disposition of the estate are trustees for the purposes of the Settled Land Acts, then, notwithstanding anything to the contrary in this Act contained, any disposition by the estate owner of his estate, otherwise than for the purposes and in the manner authorised by the Settled Land Acts, or any other Statute or by the instrument of disposition, shall be void, except for the purpose of creating such fiduciary rights as the estate owner has power to create:

Settled land is not to be disposed of otherwise than in the manner authorized by the Settled Land Acts, "or any other statute, or by the instrument of disposition."

Thus, a purchaser of the settled land will be entitled to an abstract of any instrument appointing Settled Land Act trustees of the disposition of the estate; they may have been appointed either by the disposition of the estate, or subsequently by the estate owner, or under a power contained in the instrument, or in the Trustee Act, 1893, or under an Order of Court.

Where such trustees are appointed, all capital moneys will be paid either to them or into Court.

"Or any other Statute," *e.g.*, the School Sites Acts, 1841, 1844, 1849, 1851: and see c. 38 (i.) (ii.), and notes thereto.

"Or by the instrument of disposition." These words preserve the power to confer additional powers to those conferred by the Settled Land Acts.

"Except for the purpose, &c." This saves the right of the tenant for life to deal with his life estate.

Restriction on
disposition of
settled land.

Abstracts of
appointments
of S. L. A.
trustees.

Dealings with
life estate.

- (vii.) The restraint on disposition imposed by this section shall be binding only on the estate owner during his

C. 9 (vii) (viii)
(ix).

life, and shall not restrain or otherwise affect a disposition by his real representative :

SETTLEMENTS.

Restriction as to settled land not to affect real representative.

It is essential that the real representative should have an unfettered power of disposition (except as regards cautions and inhibitions: *see* cc. 19, 22, 24, *infra*), in like manner as an executor now has in the case of leaseholds, since, for instance, he must satisfy himself whether the settlement is spent or not, and, where the testator is the settlor, must provide for payment of debts, duties, &c. : sub-c. (viii.), *infra*.

(viii.) On the death of an estate owner, where the estate is settled, whether by his will or by an instrument previous to his death, his real representative shall hold the estate subject to payment, or to making provision to his own satisfaction for payment, of all duties and other liabilities affecting the estate, upon trust to dispose of the same to the person (if any) for the time being entitled under the settlement to the possession of the land, and of full age, and in the meantime upon trust, to give effect to the fiduciary rights under the settlement; but any disposition so made to a person not of full age shall be void :

Duties of real representative as regards settled land. Sale on behalf of an infant.

This sub-c. defines his duties where the land is settled : and *see* cc. 11, 13—16.

Where there is an infant tenant for life who becomes entitled under an instrument executed or a will of a testator who dies after 1898, then on a sale otherwise than for purposes of administration the real representative will convey at the request of the persons who have the powers of a tenant for life under the S. L. A., 1882, s. 60, and the purchase-money will be paid either to him or to the trustees of the settlement (if any), or into the Court; it will not be strictly necessary for the persons having the fiduciary right to sell to join in the conveyance. Where the infant is entitled before 1899, the powers of such persons, for the purpose of passing an estate, are preserved : *see* c. 38 (ii.) (iii.), *infra*.

Payment of duties.

See, also, as to payment of duties, cc. 13 (4), 43, *infra*.

"Possession." Disposition to an infant.

"Possession" includes receipt of rents and profits : c. 2 (3), *supra*. "Disposition" includes an assent (cc. 2 (5) (6), 14), so that an assent in favour of an infant would be void.

(ix.) The disposition so made shall, if necessary, create any paramount estate which is proper, in order to give effect to, or secure, any charge of portions, or jointure not capable of being over-reached under the powers of the Settled Land Acts, or to satisfy or discharge any other fiduciary rights in favour of any other person :

Creation of paramount estate to secure portions, &c. Family charges capable of being over-reached.

For a form of conveyance creating a paramount estate to secure a fiduciary right, *see* Second Schedule, Form No. 5.

"Paramount estate" means a paramount interest which is an "estate" : c. 3 (1) (4) (iii.), *supra*.

As to what family charges are capable of being over-reached, *see* S. L. A., 1882, s. 20.

For definition of S. L. A., *see* c. 2 (9).

- (x.) Where the person so entitled to the possession of land is tenant for life within the meaning of the Settled Land Acts, the instrument effecting the disposition so made to him shall name as trustees of the settlement for the purposes of those Acts, the persons (if any) who are for the time being such trustees. If there should be no such trustees for the time being, the disposition by the real representative shall not be made until such trustees have been duly appointed :

C. 9 (x) (xi)
(xii) (xiii).
SETTLEMENTS.

In the case of settled land, the real representative in his disposition of the estate (Second Schedule, Form No. 4) will name the persons who are S. L. A. trustees of the settlement of fiduciary rights to be trustees; if there are none, he must wait until some persons have been properly appointed. Where there is a sole real representative it may be advisable to lodge a caution against him, until he conveys or assents to the estate passing to the tenant for life.

How rights of persons entitled under a settlement are protected.

As to the effect of appointing S. L. A. trustees, *see* sub-c. (vi.), *supra*.

- (xi.) A real representative who has executed a proper instrument of disposition of the estate shall be absolutely discharged from all liability in respect of the fiduciary rights affecting the same under the settlement :

Discharges a real representative, who has made a proper disposition, from further liability in respect of fiduciary rights. This renders a release by deed unnecessary.

How real representative is discharged.

- (xii.) In favour of a purchaser every such disposition, whether trustees are therein named or not, and whether appearing to be rightfully made or not, and whether the purchaser may or may not have notice of any irregularity, shall be deemed a proper and valid disposition :

In favour of a purchaser (c. 2 (11)) the disposition by a real representative to a tenant for life is to be valid, but if wrongful can be rectified (c. 38 (ix.)) at any time before a disposition by the tenant for life is made to a purchaser. If the purchaser is an actual party to a fraud he would not be entitled to take advantage of his own wrong.

How far a purchaser is protected who acts on the faith of a disposition by a real representative.

As to "notice," *see* c. 2 (12), *supra*.

There is nothing improper in enacting that a purchaser shall obtain a good title, notwithstanding he has notice of an irregularity; he will not know that there has been irregularity, but only that there may have been one.

- (xiii.) The estate owner, to whom the disposition is made, shall hold the estate acquired thereby upon trust to give effect to the fiduciary rights (if any) affecting the same :

This sub-c. supplements cc. 5 and 39, and constitutes the estate owner a trustee without any further declaration of trust wherever required.

Estate owner constituted a trustee.

- C. 9 (xiv) (xv) (xiv.) Where there is a tenant for life, within the meaning of the Settled Land Acts, of land, who is not the estate owner of the estate the subject of the settlement, then the estate owner, other than a real representative under the will creating the trust, shall be bound, at the request of such tenant for life, to concur in any instrument appearing to be a proper disposition under the powers of those Acts, and shall not be concerned to inquire as to the propriety of the transaction or of the disposition, nor be answerable for any impropriety not appearing by the contents of the instrument:

SETTLEMENTS.

See, also, c. 12 (2), *infra*.

Case of estate vested in trustees in error for tenant for life provided for. Where after 1898 the estate the subject of the settlement (c. 2 (7)) is in error vested in trustees instead of in the tenant for life within the meaning of the S. L. As. (c. 2 (9)), the trustees will be bound to convey at the request of the tenant for life (c. 2 (10)); an equitable tenant for life can no longer convey the legal fee (c. 38 (i.) (ii.)), so that it must be made obligatory on the trustees to do so. A real representative, under a will containing the declaration of trust, must, however, remain responsible until he has executed a proper disposition (c. 9 (xi.)), and retain his powers for purposes of administration.

- (xv.) Where trustees for the time being for the purposes of the Settled Land Acts of an estate have by deed released the estate from all fiduciary rights affecting it, then, in favour of a purchaser, whether having or not having notice of any irregularity, all such rights shall be deemed satisfied or discharged, and the estate owner shall thereafter have full power to dispose of the estate:

Power for S. L. A. trustees to declare a spent settlement at an end. Enables the S. L. A. trustees to put an end to the settlement in the lifetime of a tenant for life; as where the only issue who can take are by a particular wife who is dead without issue. The declaration is only conclusive in favour of a purchaser who is not stamped with a fraud in connection with it: and see note to sub-c. (xii.), *supra*.

- (xvi.) In all cases where an instrument names persons as trustees for the purposes of the Settled Land Acts, those persons are to be deemed duly appointed trustees, notwithstanding anything that may appear to the contrary:

Purchasers not to be concerned with validity of appointment of S. L. A. trustees.

A purchaser is not to go behind the disposition of the estate nor call in question the persons named therein as S. L. A. trustees; thus, if the trustees do not correspond exactly with the trustees of the settlement of fiduciary rights, or if one of them is the tenant for life, a purchaser could not object.

It is better not to confine this sub-c. to the case of purchasers, otherwise it might be doubted whether on a conveyance to the uses of a settlement the grantor would be bound to see that the trustees were duly appointed.

- (xvii.) All the provisions of the Trustee Act, 1893, and any Act amending the same, shall apply and have effect with respect to the trustees under an instrument by which a disposition upon trust is made.

CC. 9 (xvii),
10 (1) (2).

SETTLEMENTS.

56 & 57 Vict.
c. 53.

The provisions of the Trustee Act, 1893, are to apply.

This preserves the right to make vesting declarations which is incidental to the power to appoint new trustees: T. A., 1893, s. 12; c. 2 (5), *supra*; and see c. 38 (i.) (ii.), *infra*.

Provisions of
T. As., 1893,
1894, made
applicable.

A disposition of an estate to A. B. in fee simple, and an appointment of S. L. A. trustees, will be an instrument creating a trust.

Appointment of New Trustees.

10.—(1) A statement, contained in any instrument by which a trustee for any purpose with reference to an estate is appointed, that a trustee has remained out of the United Kingdom for more than twelve months, or refuses or is unfit to act, or is incapable of acting, shall, in favour of a purchaser, be sufficient evidence of the matter stated.

Provisions as
to appointment
of new
trustees.

This clause, as regards purchasers, removes the difficulties which now exist of preserving proof of incapacity, &c.: see T. A., 1893, s. 10.

Proof of
incapacity of
trustees.

Where the estate owner has power to appoint new trustees, it will be the duty of the trustees for the time being to see that the power conferred by this clause is duly exercised.

Duty of
trustees to
see that no
improper
statement is
made by
person having
power to
appoint.

(2) Where two or more trustees are estate owners and are, under this Act, to be deemed the persons nominated within the meaning of the Trustee Act, 1893, to appoint new trustees, then any trustee as to whom such statement is made shall not, for the purpose of appointing new trustees, be deemed an estate owner; but the other trustees shall alone be deemed the estate owners, and shall alone have the power to appoint new trustees.

"Deemed the
persons nomi-
nated . . . to
appoint."

For cases where the estate owner is given power to appoint new trustees, see c. 9 (iv.), *supra*, and c. 12 (1), *infra*.

"Such statement," that is, a statement as to incapacity, &c.: see sub-c. (1).

"As to whom
such state-
ment is
made."

Under the T. A., 1893, s. 10, the persons who have power to appoint new trustees are:

- (1) The person named by the instrument of trust, if able and willing to act (the Bill does not affect this class); in default,
- (2) The surviving or continuing trustees or trustee, which includes, only if willing and competent to act in the appointment, a refusing or retiring trustee; in default,
- (3) The personal representatives of the last surviving or continuing trustee.

Effect of
sub-c. as to
persons who
should have
power to
appoint new
trustees of an

For the purpose of appointing trustees of an "estate," the Bill (cc. 9 (iv.), 12 (1)) substitutes the estate owner or owners for classes (2) and (3), *supra*.

estate.

This works properly, except where the estate is vested in trustees instead of the tenant for life, and one or more of those trustees are out of the United Kingdom, or refuse or become unfit or incapable of acting in the trust, or of exercising the power to appoint. In these cases the above sub-c. enables the other trustees to appoint new trustees, and to

CC. 10 (2),
11 (i) (ii).

SETTLEMENTS.

make a proper vesting declaration without the concurrence of the absent, refusing, unfit, or incapable trustee.

Where a trustee is retiring and another is being appointed in his place, then, if willing to act (T. A., 1893, s. 10 (4)) in the appointment, he may, as one of the estate owners, join in the appointment, but, if unwilling, the deed of appointment should contain a recital that he refuses to act.

If no new trustee is appointed a retiring trustee is a necessary party : T. A., 1893, ss. 11, 12 (2).

As to Settlements executed before the commencement of this Act.

Provision as
to settlements
made before
this Act.

11. Where, under a settlement made before the commencement of this Act, by some instrument other than the will of a person who dies after the commencement of this Act, any person of full age is, at the time of the commencement of this Act, or afterwards for the first time after such commencement becomes, tenant for life, within the meaning of the Settled Land Acts, of land, the following provisions shall have effect :—

Infant tenant
for life.

The case of a settlement created by the will of a person who dies after the commencement of the Bill is governed by c. 9, *supra*.

This clause will take effect on an infant attaining full age ; meanwhile, the power to transfer an estate under the S. L. A., 1882, s. 60, is preserved : c. 38 (i.) (ii.) (iii.), *infra*.

“Tenant for
life.”

“Tenant for life within the meaning of the Settled Land Acts” : *see* cc. 2 (10), 36. This includes all persons having the powers of a tenant for life except an infant, and a person entitled to the income of the proceeds of sale or of land until sale ; but, as to this, *see* c. 12, *infra*.

Lunatic
tenant for
life.

A lunatic is an actual tenant for life ; his committee sign for him : *see* S. L. A., 1882, s. 62.

- (i.) The interest under the settlement of such person to the extent of the estate of freehold the subject of the settlement shall be, and the same is by this Act, enlarged into a fee simple or other the whole freehold estate the subject of the settlement legal or equitable, as the case may be, corresponding to his interest under the settlement, and discharged from all the limitations of the settlement, but subject and without prejudice to such of the paramount interests (if any) as could not have been over-reached by his conveyance under the powers of the Settled Land Acts if this Act had not been passed :

Interest of
tenant for
life, how
enlarged.
Base fees.

The interest “of such person” (*i.e.*, a tenant for life of full age) is enlarged into the estate of freehold, the subject of the settlement : c. 2 (7).

Where a base fee is settled (*see* S. L. A., 1882, s. 58 (iii.)), the tenant for life will, under this and the next sub-c., acquire the whole fee, and the beneficial interests will take effect as fiduciary rights. A base fee is not an “estate” : c. 3 (1), *supra*.

As to what interests can be over-reached, *see* S. L. A., 1882, s. 20.

- (ii.) Any estate of freehold, or any term of years, which, immediately before the commencement of this Act,

was not vested in such person, but was capable of being conveyed by him under the powers of the Settled Land Acts, or if such person is an infant at the commencement of this Act would have been capable of being so conveyed by him, if of full age, shall, immediately after such commencement, or on such person attaining full age, as the case may be, vest in him for all the estate or interest the subject of the settlement, but subject and without prejudice to such of the paramount interests (if any) as could not have been over-reached by his conveyance under the powers of the Settled Land Acts if this Act had not been passed; and such person and his successors in title shall be bound to indemnify the trustees of the settlement against all liability for rent and covenants (if any) in respect of the term:

C. 11 (ii) (iii)
(iv) (v).

SETTLEMENTS.

The Bill does not apply to copyholds: c. 1 (3).

This sub-c. applies where the estate the subject of the settlement is vested in trustees and not in the tenant for life, *e.g.*, the legal estate in the case of freeholds, and all leaseholds.

Settlements after the Act of leaseholds as well as freeholds should vest the fee or term in the tenant for life: see Second Schedule, Form No. 1, and note to Form No. 3.

The limitations of the settlement do not, of course, affect the interests dealt with by this sub-c.

Where a term is divested out of trustees, the tenant for life, and his successors, will indemnify them, as if the term had been assigned by them.

The interest the subject of a settlement vested in the tenant for life of full age.

Indemnity to trustees in respect of leaseholds.

- (iii.) The estate so acquired by enlargement or by vesting under this section shall be held upon trust to give effect to fiduciary rights equivalent and corresponding, as nearly as may be, to the limitations of the settlement; and notwithstanding anything to the contrary in this Act contained, any disposition by the estate owner otherwise than for the purposes and in the manner authorised by the Settled Land Acts, or by any other Statute, or by the instrument under which the estate is settled, shall be void, except for the purpose of creating such fiduciary rights as the estate owner has power to create:
- (iv.) Provided that the estate so acquired shall not divest or prejudice, but shall take effect subject to, the interest of any person who at the commencement of this Act has by disposition subsequent to the settlement become a purchaser of the settled land, or of any interest therein, whether in possession, remainder, reversion, or otherwise:
- (v.) Provided also, that the interest of every such purchaser shall be deemed a paramount interest, but nevertheless and notwithstanding anything to the contrary in this Act contained the powers conferred

CC. 11 (v) (vi)
(vii), 12 (1).

SETTLEMENTS.

by the Settled Land Acts or any other Act or the settlement shall remain in force so far as necessary to enable such interest to be divested or defeated by any disposition under those powers in like manner as if this Act had not been passed :

(vi.) Where an estate has been so acquired under this section all the provisions in this Act contained with respect to settlements made after the commencement of this Act shall apply and have effect with respect to the settlement, the estate under which is so acquired :

(vii.) Provided that, where there are more than four trustees for the purposes of the Settled Land Acts of the settlement, all the trustees may continue to act; but if and when the number of trustees becomes reduced to four, the number of trustees shall not afterwards be increased beyond four.

Rights of
beneficiaries
and pur-
chasers pro-
tected.

Sub-c. (iii.) secures the rights of beneficiaries : and *see* note to c. 9 (vi.), *supra*.

Sub-c. (iv.) secures the rights of purchasers from beneficiaries under a settlement. There is no need to protect a purchaser who has priority to the settlement. His right is a paramount interest under c. 3 (4), *supra*. For "settled land," *see* c. 2 (2).

As to sub-c. (v.). The interests of purchasers who take by disposition subsequent to the settlement are made paramount interests except so far as they are liable to be defeated under the S. L. A., 1882, s. 20, or under the power of sale.

How far pro-
visions as to
past settle-
ments made
applicable to
future
settlements.

Sub-c. (vi.) incorporates, subject to sub-c. (vii.), the provisions contained in c. 9, where an estate is acquired under sub-co. (i.) and (ii.), *supra*.

As to sub-c. (vii.), *see* last note ; and c. 9 (v.), *supra*, and note thereto.

As to Settlements by way of Disposition on Trust for Sale.

As to dis-
positions on
trust for sale.
45 & 46 Vict.
c. 38.

12.—(1) Where a disposition of an estate upon trust creating a settlement deemed to be existing within section sixty-three of the Settled Land Act, 1882, does not contain any power or any power which the donee of the power is able and willing to execute, given to some person by name to appoint new trustees thereof, then, notwithstanding any power for that purpose contained in a separate instrument (if any) declaring fiduciary rights, there shall be deemed to be no express power to appoint new trustees of the disposition on trust, and the estate owner shall have power and shall be deemed the person nominated within the meaning of the Trustee Act, 1893, to appoint new trustees.

Appointment
of trustees of
settlements
by way of
trust for sale.

Under this sub-c. a purchaser will not have to investigate the settlement of the proceeds of sale for the purpose of seeing that proper persons have been appointed trustees for sale, notwithstanding that the power to appoint trustees has in error been omitted from the disposition of the estate : and *see* c. 10 (2), *supra*, and note thereto ; also c. 9 (xvi.) ; compare c. 9 (iv.).

But, as regards the beneficiaries, the persons who have power to

appoint under the sub-c. will be bound (cc. 3 (2), 5, 39) to appoint the same persons who are trustees of the money settlement. CC. 12 (1) (2) (3), 13 (1).

(2) Where an order has been made under section seven of the Settled Land Act, 1884, nominating a person to exercise all or any of the powers conferred by the Settled Land Acts, then the estate owner, not being a real representative under a will creating the trust, shall be bound at the request of such person to concur in any instrument appearing to be a proper disposition, and shall not be concerned to inquire as to the propriety of the transaction or of the disposition, nor be answerable for any impropriety not appearing by the contents of the instruments. SETTLEMENTS. 47 & 48 Vict. c. 18, s. 7.

Compare c. 9 (xiv.), *supra*, and note thereto.

This sub-c. is necessary, inasmuch as it is essential (c. 38 (i.) (ii.)) that the estate owners (in this case they are trustees for sale) should, except in case of vesting declarations, be parties to the conveyance. Effect of leave to exercise S. L. A.

The sub-c. preserves the principle of the S. L. A., which is to make the tenant for life the master of the situation. powers given to tenant for life of proceeds of sale.

"Not being a real representative (c. 13 (2)) under a will (c. 2 (8)) creating the trust," he may have to sell the land for payment of debts, duties, &c., so is not bound; but a real representative of a surviving trustee is bound. Why real representative of settlor left unfettered.

(3) This section applies whether the settlement is deemed to be subsisting before or after the commencement of this Act.

The clause applies to all existing as well as future settlements by way of trust for sale.

The effect of this clause and c. 7, *supra*, upon settlements by way of trust for sale is, that the power to appoint trustees will always be contained (as it generally is now) in the disposition of the estate, but the power to consent to a sale, as being a fiduciary right, will in future be contained only in the money settlement. The person at whose request the sale is to be made may lodge a caution, if thought necessary. Effect of clause on settlements within S. L. A., 1882, s. 63.

Though the trustees for sale will, under c. 7, *supra*, have absolute power of disposition in favour of a purchaser (c. 2 (11)), yet it will be a breach of trust (c. 39) for them to make a disposition otherwise than in accordance with their trusts or powers.

PART VII.

REAL REPRESENTATIVE.

13.—(1) In this part of this Act the expression "Real Estate" includes: Creation of and provisions respecting real representative.

(i.) Estates, fiduciary rights, chattels real which are not estates, and land in possession, remainder or reversion, and every interest in land, and a personal inheritance to any of which a deceased person is entitled at the time of his death for any interest not ceasing on his death:

(ii.) Real estate held on trust or by way of mortgage or security, but not money to arise under a trust for sale of land, nor money secured or charged on land:

- C. 13 (1) (2). (iii.) And a testator shall be deemed to have been entitled at his death to real estate, or any interest therein, passing under any gift contained in his will which operates as an appointment under a general power to appoint by will:
- REAL REPRESENTATIVE.
- (iv.) But the interest of a deceased person under an estate tail and also under a joint-tenancy or a tenancy by entireties where another tenant survives the deceased shall be deemed an interest ceasing on the death of the deceased, so nevertheless as not to affect the disposition or devolution of any interest of the deceased in remainder or reversion.

Compare L. T. A., 1897, s. 1, which is repealed (c. 17, *infra*) and replaced by this clause. The section did not contain any positive definition of "real estate": see notes to that section, *supra*.

"Real estate."

"Estates" and "fiduciary rights" (c. 3 (1) (2), *supra*); "chattels real which are not estates" (c. 38 (viii.)); "land" (c. 2 (1) (4)); "a personal inheritance," e.g., an annuity limited to A. and his heirs.

An estate *pur autre vie* limited to the heir as special occupant is an interest in "land" which includes an incorporeal hereditament, easement, right, privilege or benefit in, over, or derived from land; so is a right of entry, whether for condition broken or otherwise: and see sub-c. 10, *infra*.

Trust and mortgage estates.

Trust and mortgage estates are included; but since the Bill does not apply to copyholds (c. 1 (3)), s. 30 of the C. A., 1881, is left unrepealed in order that the equitable interest (which is unaffected by the Copyhold Act, 1894, s. 88) may still pass thereunder.

General power of appointment.

Real estate, as defined, will pass if a testator exercises by his will a general power of appointment: sub-c. (iii.), *supra*.

"For any interest not ceasing on his death."

Under sub-c. (i.) and (iv.) a fiduciary right for life or in tail, and the right of survivorship under a joint tenancy or tenancy by entireties are excepted.

Though the interest of a tenant in tail, joint tenant, or tenant by entireties is to be deemed to cease on his death, this only prevents the interest passing to the real representative: sub-c. (iv.).

Base fee.

A base fee will pass to the extent to which the disentail is effectual; where, however, the fee has been enlarged into a fee simple under c. 11 (i.) (ii.), *supra*, the whole fee will pass, but without prejudice to the fiduciary rights: c. 11 (iii.).

(2) The executor (original or by representation), or administrator, from time to time, of a deceased person shall be the real representative as well as the personal representative of the deceased, but it shall not be obligatory to appoint the same person executor of the real estate as well as executor of the personal estate.

Definition of real representative.

Compare L. T. A., 1897, s. 1, and preamble, which contains no definition of a real representative, nor any power to appoint a separate executor.

A real representative may be constituted in the same way as an executor in the case of personal estate.

Power to appoint separate executor of real estate.

A testator now has power to appoint an executor for a special purpose; but in most cases the executors of real and personal estate will be the same persons: see Second Schedule, Form No. 8. There can be no objection to a separate executor of the real estate. Both the real and personal representatives will be bound to administer properly; more-

over, the inconveniences which might arise if they were necessarily the same persons would be great.

C. 13 (2) (3)
(4) (5) (6) (7).

(3) Real estate of a deceased person shall, on his death, and notwithstanding any testamentary disposition thereof, devolve to the real representative of the deceased from time to time, in like manner as before the commencement of this Act chattels real devolved to the personal representative from time to time of a deceased person.

REAL REPRESENTATIVE.

Compare L. T. A., 1897, s. 1 (1), which, however, does not apply to chattels real.

All "real estate," including chattels real, is to vest in the real representative, notwithstanding any testamentary disposition; the clause applies (*see* sub-c. (12)) to the case of every person dying after 1898.

Vesting of real estate in real representative.

(4) All enactments and rules of law, and all jurisdiction of any Court with respect to the appointment of executors or to probate or letters of administration, or dealings before probate in case of chattels real, and with respect to costs and other matters in the administration of personal estate in force before the commencement of this Act, and all the powers, duties, rights, equities, obligations, and liabilities of a personal representative in force at the time of the commencement of this Act with respect to chattels real, shall apply and attach to the real representative and shall have effect with respect to real estate vested in him, and in particular all the like powers for the survivors or survivor of several real representatives, as well as for a single real representative, and for all the real representatives together to dispose of or otherwise deal with real estate, shall, as in case of personal representatives with respect to chattels real before the commencement of this Act, belong to the real representatives or representative from time to time of a deceased person with respect to his real estate.

(5) Provided that where there are two or more real representatives a disposition shall not be made without the concurrence therein of all such representatives, or an order of the Court.

(6) The real representatives for the time being of a deceased person shall be deemed in law his heirs and assigns within the meaning of all trusts and powers binding or conferred on him as a trustee or mortgagee.

(7) Probate and letters of administration may be granted in respect of real estate either separately or together with personal estate, and may also be granted in respect of real estate where there is no personal estate.

As to sub-cc. (4) and (6), compare L. T. A., 1897, s. 2 (2).

Though one of several real representatives may not convey without an order of the Court, if the Court grants probate to A. and B. while the right to prove is reserved to C., it is conceived that the grant would operate as an order enabling A. and B. to convey until C. came in and proved.

Powers and duties of real representative.

C. 13 (7) (8) (9)
(10) (11) (12).

REAL REPRESENTATIVE.

Power for one of several representatives to convey.

Heirs and assigns within the meaning of trusts and powers.

Power to grant administration.

Real representatives not expressly made trustees.

Real representative an estate owner and liable as such.

44 & 45 Vict.
c. 41.

Interests to be considered on the grant of letters of administration.

Rules of Court.

It seems better to vest chattels real in the real representative; the power for one of several executors or administrators to convey a chattel real is rarely used in practice, and there should be no difficulty in obtaining an order where required.

Sub-c. (5) follows C. A., 1881, s. 30; it is conceived that it is not required, except in the case of trust and mortgage estates.

As to sub-c. (7), compare L. T. A., 1897, s. 1 (3); there is no power in that Act for the Court to grant probate and letters of administration to real estate separately from the personal estate.

It is thought better not to risk making the real representative an express trustee, as in L. T. A., 1897, s. 2 (1), but the beneficiaries are properly secured by saddling the real representatives with the like obligations as personal representatives: *see* sub-c. (4), *supra*. If an "estate" devolves to a real representative he becomes an "estate owner" (c. 3 (3)), and is liable as a trustee for any wrongful disposition: c. 39, *infra*.

(8) In granting letters of administration, the Court shall have regard to the rights of all persons interested in the real estate, as well as in the personal estate of the deceased person, and an heir-at-law shall, where the Court thinks proper, be entitled to the grant instead of a next-of-kin; and a grant of letters of administration to real estate may be limited in any way the Court thinks proper; and the same principles shall apply to the grant of letters of administration, with the will annexed, to a devisee or legatee.

(9) Provision may be made by Rules of Court for adapting the procedure and practice on the grant of probate and letters of administration to the case of real estate.

(10) The appointment of a real representative shall not affect any rule of law as to administration of assets, nor the beneficial interest in real estate under any testamentary disposition, nor the descent of any beneficial interest in real estate, nor any other devolution of nor any mode of dealing with any beneficial interest in real estate, nor the right of any person claiming to be interested in the real estate to take proceedings for the protection or recovery thereof against any person other than the real representative, but subject to the rights of such representative.

(11) In a conveyance as defined by the Conveyancing and Law of Property Act, 1881, or in an assent made by a person who conveys, or is expressed to convey, or assent, as real representative, there shall be deemed to be included, and there shall be implied the like covenant as if he had conveyed, and had been expressed to convey, as personal representative.

(12) This section applies to the case of every person dying after the commencement of this Act.

As to sub-c. (8), compare L. T. A., 1897, s. 2 (4). That section does not, it seems, enable the Court to grant administration to the heir in place of the next-of-kin, however small the personal estate might be, nor is any express provision made for limiting the grant.

Sub-c. (9) follows the last paragraph in L. T. A., 1897, s. 2 (4), except that it expressly enables rules to be made with regard to probate also.

The existing Rule under L. T. A., 1897, s. 2 (4), is:—

“All Rules, orders and instructions, and the existing practice of the Court with respect to non-contentious business shall, so far as the circumstances of each case will allow, be applicable to grants of probate and administration made under the authority of the Land Transfer Act, 1897.”

As to sub-c. (10), compare L. T. A., 1897, s. 2 (3), the whole of which section is repealed: *see* c. 17, *infra*.

There appear to be abundant reasons for the repeal of this section, for, quite unnecessarily, it makes real estate legal assets in the hands of the real representative, and raises a doubt whether real estate, not otherwise chargeable, is rendered liable to be sold for payment of legacies. Moreover, the intention not to affect the beneficial rights under a will, or on an intestacy, can only be gleaned from ss. 2 (1) (4), 3 (1).

Inasmuch as a legatee can maintain no action at law until the executor has assented to his bequest (*Elliott v. Elliott*, 9 M. & W. 23, 26), it seems most desirable that a devisee or heir should have this right secured to him: sub-c. 10, *supra*.

Sub-c. (11), *supra*, enables a proper covenant for title to be implied in a conveyance or assent (*see* c. 14, and Second Schedule, Form 8, *infra*) under the C. A., 1881, ss. 2 (5), 7 (7). There is no corresponding provision in L. T. A., 1897.

CC. 13 (12), 14
(1) (2) (3) (4)
(5) (6).

REAL REPRESENTATIVE.

Administration of assets.

Rights of devisees and heirs-at-law.

Power for beneficiary to take action for recovery of land.

Implied covenant for title by real representative.

Effect of assent or conveyance by real representative.

14.—(1) A real representative may assent to the vesting in any person of any real estate to which the testator or intestate was entitled, and which devolved to the real representative; and the assent shall operate as a conveyance by the real representative to that person of the estate or interest to which the assent relates, and the estate or interest shall vest in that person accordingly.

(2) The assent shall be in writing, signed by the real representative, and shall name the person in whose favour it is given.

(3) An assent or conveyance by a real representative shall, in favour of a purchaser, be taken as conclusive evidence that the person in whose favour the assent or conveyance is given or made is the person entitled to have the estate or interest conveyed to him, but shall not otherwise prejudice or affect the claim of any person rightfully entitled to the estate or interest conveyed.

(4) An assent or conveyance given or made by a real representative shall not, except as against a purchaser, prejudice the right of the real representative or any other person to recover out of the estate or interest to which the assent or conveyance relates, or to be indemnified by such estate or interest against any debt or liability to which such estate or interest would have been subject if there had not been any assent or conveyance.

(5) A real representative may, as a condition of giving an assent or making a conveyance, require security for the discharge of any such debt or liability.

(6) An assent may be in the form contained in the Second Schedule to this Act.

CC. 14 (7), 15
(1) (2).

REAL REPRESENTATIVE.

Settled land.

Power to
assent.

Assent to be
in writing.

Bill applies to
leaseholds.

Effect of
assent or
conveyance
by real repre-
sentative in
favour of
purchaser.

Effect of
assent in
favour of a
beneficiary.

Stamp duty
on convey-
ances.

Possession
may be given
before assent.

(7) This section shall not affect any duty payable in respect of a conveyance which would have been required if this Act and the Land Transfer Act, 1897, had not been passed.

This clause should be read with cc. 9 (viii.) (ix.) (x.) (xi.), 11 (vi.), which provide for the case of land settled at the death of the estate owner.

See, also, s. 39, for cases where the real representative becomes an "estate owner:" c. 3 (3).

The power to assent is not limited to the case of a devise (as is the case under the L. T. A., 1897, s. 3), since that would render necessary a conveyance to the heir, and thus constitute a considerable hardship to the owners of small holdings, who can ill afford the costs of preparation and stamping of a conveyance.

It is essential, however, that the assent be in writing (sub-c. (2)), for the principle of the Bill is that title shall be shown by documentary evidence (including probate as evidence of a death) only, except where title is acquired under the Statutes of Limitation.

The Bill aims at simplification of title to chattels real as well as real estate, so that an implied assent in the case of leaseholds can no longer be permitted.

For permissive form of assent, see Second Schedule, *infra*, Form No. 8.

In favour of a purchaser (sub-c. (4)) the assent or conveyance is made conclusive; hence the purchaser will not be concerned with proof of heirship nor with the terms of a devise, nor with any fiduciary rights under a settlement executed previous to the death of the estate owner. If the assent or conveyance is made to a purchaser from the heir or devisee, then, unless *ad val.* stamp duty has already been paid, it will be payable on the assent or conveyance: sub-c. (7).

As to fraud, &c., see c. 38 (ix), *infra*.

Sub-cc. (3) and (4) preserve the right to follow the estate or interest conveyed until it is acquired by a purchaser: c. 2 (11). Where a real representative ascertains that he has made an improper conveyance, he may lodge a caution or inhibition, or if the interest is not "an estate" register a *lis pendens*. This will effectually prevent the grantee parting with his interest to a purchaser.

As to sub-cc. (4) and (5), compare L. T. A., 1897, s. 3 (1); that sub-s. is wholly repealed, and the rest of the section is also repealed except as regards registered land: c. 17, *infra*.

Sub-c. (7) places stamp duty on conveyances on the same footing as before the L. T. A., 1897. Thus, where a deed would have been necessary before that Act, a 10s. deed stamp or an *ad val.* stamp, as the case may be, will be required.

Thus, if a real representative sells for purposes of administration, the conveyance must be stamped *ad val.*

If the heir, devisee, or person entitled under a settlement requires a conveyance to be made to him, it will still be liable to a 10s. stamp, *secus* if he is satisfied with an assent.

15.—(1) A real representative, before giving an assent or making a conveyance in favour of any person beneficially entitled, may permit such person to take possession of the land, and such possession shall not prejudice or affect the right of the real representative to take or resume the possession nor his power to dispose of the land as if he were in possession thereof.

(2) A real representative, or any person beneficially interested, claiming possession or a conveyance, or an assent to the vesting of real estate, may apply to the Court for direc-

tions with reference thereto, and the Court may make such order as may be deemed proper.

CC. 15 (2), 16
(1) (2) (3) (4)
(5) (6) (7).

“Possession” includes receipt of rents and profits: c. 2 (3).

The L. T. A., 1897, contains no provision corresponding to sub-c. (1), with the result that a real representative may incur a considerable risk if he lets a beneficiary into possession without charging a rent, or making him account for rents and profits. If he refuses, it may work hardly on the beneficiary.

Sub-c. (2) should be read with c. 13 (10), *supra*, and compare L. T. A., 1897, s. 3 (2), which sub-s. is to apply only to registered land: c. 17 (ii.), *infra*.

REAL REPRESENTATIVE.

Result if no power to give possession.

Power to apply to Court for possession or conveyance.

Appropriation of property by real or personal representative in satisfaction of legacy or share.

16.—(1) The real or personal representative of a deceased person may allot or apportion the whole or any part of the real or personal estate respectively of the deceased in or towards satisfaction of any legacy bequeathed by the deceased, or of any other interest or share in his property, as to the real or personal representative shall seem just and reasonable, according to the respective rights of the persons interested in the property of the deceased.

(2) For the purposes of such allotment or apportionment the real or personal representative may ascertain and fix the value of the respective parts of the real or personal estate of the deceased.

(3) Six months before any disposition is made for giving effect to the allotment or apportionment, notice in writing of the intended disposition shall be served by post on all persons whose rights may be affected thereby, and the notice shall contain such particulars of the property of the deceased, and of the valuation thereof, as the circumstances of each case require.

(4) Provided that where any person entitled to notice is a lunatic or infant the notice may be served on his committee or guardian.

(5) The provisions of this section shall have effect notwithstanding that notice cannot be served by reason that a person not in existence, or who cannot be found or ascertained at the time of allotment or apportionment, may be or become entitled to part of the property of the deceased, but the real or personal representative shall have regard to the rights of such person.

(6) Any person dissatisfied with the intended allotment, disposition, or otherwise, may, at any time within six months from the date of the notice, apply to the Court, by summons, and the Court may make such order as it thinks just; and, subject to any such order, the allotment, apportionment and valuation, as well as the disposition giving effect to the same, shall be binding on all persons then or thereafter to be interested in the property of the deceased.

(7) This section does not affect any rule of law as to administration of assets, nor prejudice any other power of

CC. 16 (7) (8), allotment conferred by law, and is to apply whether the
 17 (i) (ii) (iii). deceased died intestate or not, but is to take effect subject to
 the express provisions contained in the will (if any) of
 the deceased.

REAL REPRESENTATIVE.

(8) In the case of land registered under the Land Transfer Acts, 1875 and 1897, the production of the evidence prescribed under those Acts of an allotment under this section shall authorise the registrar to register the person to whom the property is allotted as proprietor of the land.

Why L. T. A., It seems better to repeal (c. 17, *infra*) and replace L. T. A., 1897, s. 4,
 1897, s. 4, since not only does that section appear to be inapplicable in the cases
 replaced. within sub-c. (5), *supra*, but it also raises a doubt whether the common
 law power of appropriation (*see Re Lepine*, 1892, 1 Ch. 210; *Re Richardson*,
 1896, 1 Ch. 512) is not fettered by the provisions as to notice: *see*, now,
 sub-c. (7), *supra*.

"According to the respective rights of the persons interested." "According to the respective rights of the persons interested . . ."
 (sub-c. (1)); these words are sufficient, for instance, to prevent the repre-
 sentatives from allotting land specifically devised to any other person but
 the specific devisee, unless the land would otherwise be sold for payment
 of debts, in which case it might be allotted to a creditor in discharge of a
 debt. The Bill does not alter the order in which property is liable for
 debts, nor impose on real estate any charge for payment of legacies:

Disposition giving effect to allotment. c. 13 (10), *supra*.
"Served by post." As to result of disposition giving effect to allotment, *see* c. 14 (3) (4),
supra; and as to service by post (sub-c. (3)), *see* Interpretation Act,
 1889, s. 26.

Registered land. Sub-c. (8) follows L. T. A., 1897, s. 4 (3).

AMENDMENTS OF PARTS OF THE LAND TRANSFER ACT, 1897.

Repeal and amendment of parts of Land Transfer Act, 1897. 17. The following sections or parts of sections of the Land Transfer Act, 1897, are hereby repealed or varied as follows, namely:—

- (i.) Sections one and two, and sub-section one of section three, and sections four and five are wholly repealed:
- (ii.) In sub-section two of section three the words "that the conveyance be made or" are struck out, and that sub-section shall be read and have effect as if those words were not contained therein:
- (iii.) Sub-sections two, three, and four of section three, and sub-section five of section six, shall be read and have effect as if the words "real representatives" had been inserted therein instead of the words "personal representatives" wherever they occur.

Death duties. A re-enactment of s. 5 is not required; seeing that the real representative is called a "real representative," there is nothing in the Bill which could be construed as affecting the incidence of death duties: and *see* cc. 13 (10), 41.

But as to over-reaching death duties in favour of a purchaser, *see* c. 43, *infra*.

As to stamp duties on conveyances, *see* c. 14 (7), *supra*, and note thereto.

CC. 18 (1) (2),
19, 20 (1).

PART VIII.

CAUTIONS AND INHIBITIONS.

Register.

18.—(1) The registrar shall cause to be kept, at the office of land registry, a register of the cautions and a register of the inhibitions lodged with him under the provisions of this Act. Register to be kept at Land Registry Office.

(2) Each register shall be in the prescribed form.

“The registrar,” *see* c. 2 (14); “prescribed,” *see* cc. 2 (16), 29.

Cautions.

19. A caution may be lodged with the registrar, requiring notice to be served as by this Act provided, of any intended disposition of an estate by the person restrained, or by his real representative, in the land mentioned or referred to in such caution. Caution may be lodged.

20.—(1) A caution shall be in writing in the prescribed form, and shall include— Form of and provisions as to caution.

- (i.) The name and address of the cautioner :
- (ii.) A short reference to the land in respect of which the caution is lodged, either in words or by reference to a plan, or to an instrument, or by all or any of those means, and including in every case the name of the county, and of the parish (if any), and also, where practicable, the name of the street, or place, where the land is situated :
- (iii.) The name and address of the person restrained :
- (iv.) The names and addresses within the United Kingdom of the persons, not more than four in number, including, if so desired, as one of the persons, the name and address of a partnership or firm, on whom notice is to be served as by this Act provided :
- (v.) A statement that the cautioner is interested in restraining a disposition by the person restrained of the land referred to in the caution :
- (vi.) Such further short particulars as may be prescribed.

It is conceived that a cautioner (c. 2 (13)) will make use of a plan where a more general description would lead to the caution being warned off : *see* c. 21 (5), *infra*. When plan used on a caution.

The cautioner may require the notice (c. 21, *infra*) under the caution to be given to four persons, including as one of such persons a firm of partners, so that his interests may be protected during his absence abroad. Cautioner absent abroad.

“Person” includes “corporation :” Interpretation Act, 1889, s. 19.

As to the security afforded by cautions, *see* cc. 21 (1), 24.

“Person restrained” (c. 2 (13)) ; the caution will remain in force against his real representative : c. 19, *supra*.

Security afforded by cautions.
“Person restrained.”

CC. 20 (1) (2)
(3) (4), 21 (1).

**CAUTIONS AND
INHIBITIONS.**

Cautions to
bind "estate
owners"
only.

The Bill (c. 41) only confers powers of disposition on "estate owners": hence cautions are not required to bind owners of fiduciary rights. The "estate owner" may have a fiduciary right, and to the extent of this right the caution is of no avail.

(2) A caution shall be signed by the cautioner, or by a solicitor on his behalf, and attested by at least one witness, being a solicitor, and shall operate, and shall be taken in law, as a statutory declaration by the person signing it, that the statement therein as to the cautioner being interested is true.

Provisions
preventing
undue lodg-
ment of
cautions.

"Statutory declaration:" Interpretation Act, 1889, s. 21.

A cautioner, besides being liable to pay compensation (sub-c. (4), *infra*), will be liable for making a false statutory declaration if he lodges an improper caution; thus, few cautions will be lodged unnecessarily.

A caution ought not to be lodged against an estate owner who is, apart from the powers conferred by the Bill, capable of defeating the right sought to be protected.

(3) Where a cautioner desires to amend the description of the land referred to in the caution, or to change the names or addresses or both of the persons on whom notice is to be served, he may lodge with the registrar a substituted caution, and upon the expiration of two clear days from the day when the substituted caution is lodged or considered to be lodged, the registrar shall cause an entry to be made in the register vacating the original caution.

"Substituted
caution."

A substituted caution may be obtained where an amendment in the original caution is required; a full fee will not be charged (c. 30 (3)); but where it is intended to include new land in the caution, a new caution will be necessary.

When caution
takes effect.

A caution takes effect after two clear days from lodgment: c. 23 (1).

"Considered to be lodged:" c. 23 (2).

(4) Any person lodging a caution without reasonable cause shall be liable to pay compensation for all injury sustained, and costs incurred consequent thereon, and the amount of such compensation and costs shall constitute a debt due to the person restrained, or the persons deriving title through him, and may be recovered accordingly.

Compensation
for improper
lodgment of
cautions.

See note to sub-c. (2), *supra*.

Notices under Cautions.

By whom
notice may be
given: form
of request or
notice.

21.—(1) The notice required by the caution shall, on request in writing, made by or on behalf of any person interested in vacating the caution, be given in writing by the registrar.

Registrar to
send notice.

The registrar must send the notice, otherwise there would be no security that the notice would be sent.

(2) The request shall be in the prescribed form, and shall be signed by the person making the same or by a solicitor on his behalf, and shall be attested by at least one witness, being a solicitor, and shall contain a statement that the person making the request is interested in vacating the caution, and shall operate and shall be taken in law as a statutory declaration by the person signing the request that such statement is true.

C. 21 (2) (3)
(4) (5) (6).

CAUTIONS AND
INHIBITIONS.

This sub-c., with sub-c. (7), *infra*, will prevent "a request" being made unnecessarily.

Restrictions
on improper
vacation of
cautions.

(3) The notice shall be in the prescribed form and dated, and shall be served by being sent in a registered letter posted on the day of the date of the notice to each person named for service in the caution at his address stated in the caution.

(4) The registrar shall cause a copy of each notice to be filed, with a memorandum of the same having been sent, and the memorandum shall be sufficient evidence that the notice was duly sent.

No questions will arise as to the actual receipt of the notice.

Provisions as
to service of
notice and of
evidence
thereof.

(5) At the expiration of fourteen clear days from the date of a notice served pursuant to this section of an intended disposition, the caution to which the notice relates shall be vacated, and the effect shall be the same as if the caution had never been lodged; and any other caution, except a consent caution, lodged in respect of the same land by the same cautioner or persons deriving title under him before the expiration of such fourteen days shall have no effect, and the registrar shall refuse to receive the same.

A caution will be vacated after fourteen clear days from date of notice; no other caution (except a "consent caution" (*see* sub-c. (7), *infra*), that is with the consent of the person who requests the notice to be made vacating the original caution) can be lodged in respect of the same land during these fourteen days; hence, unless an inhibition is obtained under the next sub-c., or some other person lodges a caution, the power of disposition, so far as cautions and inhibitions are concerned, will be unfettered at the latest after the fourteen days.

Vacation of
cautions.

A caution will be vacated wholly under a notice, but it may be partially vacated by consent, or under an order of Court: *see* c. 23 (4) (5) and (6).

Partial vaca-
tion.

As to the effect of a disposition while a caution is in force, *see* c. 24.

In view of the simple process of warning off cautions, there is no necessity for requiring re-lodgment after a certain period; moreover, any provision for re-lodgment would depreciate the security.

Provisions for
periodical
re-lodgment
of cautions
undesirable.

(6) A cautioner who has received notice of an intended disposition may apply to the Court for an inhibition, and the Court, upon being satisfied that the applicant is entitled to an inhibition, may make an order authorising him to lodge an inhibition similar in terms, as nearly as may be, to the caution, or in any other terms, and directing the registrar to receive

CC. 21 (6) (7), and register the same, or may make such further or other
22 (1) (2) (3). order as to the Court seems just; and the registrar shall
comply with the order so made.

**CAUTIONS AND
INHIBITIONS.**

Power to
apply for
inhibition.

As to when the Court will grant an inhibition, *see* note to c. 20 (2),
supra. And as to inhibitions, *see* cc. 22—30.

(7) Any person who, without reasonable cause, requests notice to be given vacating a caution shall be liable to pay to the cautioner damages for any loss by him consequent on the caution being vacated, and the cautioner may, with the consent of such person, lodge a consent caution, or may apply to the Court for an order enabling him to lodge an inhibition, and thereupon the Court may make such order as it thinks proper, and the cost of lodging a consent caution or of obtaining and lodging an inhibition may be recovered by the cautioner as liquidated damages from the person who requested notice to be sent.

Improper
vacation of
cautions.

This sub-c. gives the cautioner three remedies against the person who unreasonably requests notice to be given vacating his caution, namely, damages; costs of lodging a consent caution; or costs of obtaining an inhibition: and *see* sub-c. 2, *supra*.

"Consent
caution."

If the cautioner has no right to an inhibition, the sub-c. will not apply, except that a consent caution might be obtained, but this would not render the consenting party liable for its being improperly lodged; he only consents as against his own interest.

Inhibitions.

Inhibition
may be lodged
by consent or
order of
Court: form
and signature
of inhibition.

22.—(1) An inhibition may be lodged with the registrar requiring that a disposition by the person restrained or by his real representative of the estate of that person in the land mentioned or referred to in the inhibition be not made without consent or an order of the Court, as provided by this Act.

Manner of
vacating
inhibition.

To defeat the rights protected by an inhibition, the person restrained (c. 2 (13)) must obtain the consent of the inhibitor (c. 2 (13)), or his real or personal representative, or an order of Court, to vacate the inhibition, either wholly or partially, as required: *see* c. 23 (4) (5) (6), *infra*.

Effect of
disposition
while inhibi-
tion in force.

Though, by the terms of an inhibition, the person restrained may not dispose of the land referred to in the inhibition, nevertheless a disposition made while an inhibition is in force will not be void, but the rights of the inhibitor and persons deriving title under him will be protected (c. 24); these rights might, for instance, have been released without vacating the inhibition, which might have been overlooked.

(2) An inhibition shall be lodged only with the consent in writing of the person restrained or under an order of the Court.

(3) An inhibition shall be in the prescribed form, and, except with respect to notices and the statement as to the cautioner being interested, shall correspond as nearly as may be with the prescribed form of caution.

(4) An inhibition shall be signed by the inhibitor, or by a solicitor on his behalf, and by the person restrained, or by a solicitor on his behalf, and each signature shall be attested by at least one witness, being a solicitor; or in case of an inhibition by order of the Court, the order may direct that it is to be signed by a solicitor on behalf of any person, and the signature of any such solicitor shall be sufficient.

CC. 22 (4), 23
(1) (2) (3) (4)
(5).

CAUTIONS AND
INHIBITIONS.

An inhibition may be obtained only with the consent of the person restrained, or under an order of Court.

How inhibition is to be obtained.

Except that an inhibition is in the nature of a permanent block on the powers of disposition given by the Bill to the estate owner (that is, it cannot be vacated otherwise than by consent or an order of Court), the security afforded is the same as in the case of a caution.

Distinction between inhibition and caution.

Cautions and Inhibitions.

23.—(1) A caution or an inhibition shall take effect, and be in force only from and after the expiration of two clear days from the day on which it is lodged, or considered to be lodged.

Effect of caution or inhibition: its duration and vacation.

Cautions and inhibitions are to take effect only after two clear days from lodgment: and *see* sub-c. (2), *infra*.

Thus, a purchaser can ascertain that there is no caution or inhibition, and will have three clear days from the date of the office copy certificate (cc. 27, 28 (3) (4)) that no caution or inhibition is lodged wherein to complete before any caution or inhibition can take effect, and attendance at the registry to complete will be unnecessary. The certificate will give the result down to 12 o'clock on date of issue (c. 28 (3)), after which time no caution or inhibition can be lodged until the next day: *see* sub-c. (2), *infra*.

Provisions enabling purchaser to complete away from the registry.

There is no hardship in this; the intending cautioner or inhibitor may lodge his caution or inhibition two days before he intends it to take effect.

(2) Every caution or inhibition lodged after twelve o'clock at noon of any day shall be considered as lodged before that hour on the next day other than Sunday, Christmas Day, and Good Friday.

(3) A caution or inhibition in force against a deceased person shall remain in force against his real representative in like manner, and subject to the like provisions, as if such real representative were the person restrained.

(4) A caution or inhibition may be vacated by an order of the Court or by consent as to all the land referred to therein, or as to any part or parts from time to time of such land, and if and so far as vacated the effect shall be the same as if it had never been lodged.

(5) The consent shall be in writing in the prescribed form, signed by the cautioner or inhibitor, or his real or personal representative, or by the survivor or survivors of two or more cautioners or inhibitors, or by the real or personal representative of the last survivor, attested as to each signature by at least one witness, being a solicitor.

CC. 23 (6),
24, 25.

CAUTIONS AND
INHIBITIONS.

"Considered
as lodged."

Real repre-
sentative re-
strained by
lodgment
against
deceased.

Partial vaca-
tion.

Dispositions
to be subject
to interests of
cautioners or
inhibitors.

"Lodged at
the time when
the disposi-
tion was
made."

No search on
further
advances.

No need of
caution or
inhibition
where the
whole estate
is conveyed
by mortgage.
A caution or
inhibition not
to affect
priorities.

(6) Upon such order or consent in writing being lodged with the registrar, he shall make an entry thereof in the register, and upon such entry being made the caution or inhibition mentioned in such order or consent shall cease to be in force, either as to all the land or as to the part thereof specified in such order or consent as the case may be.

Sub-c. (2) enables certificates to be issued up to date: c. 28 (3) (4), *infra*.

Under sub-c. (3), "person restrained" will include a real representative. This is sufficient, since the person to whom the real representative conveys will take subject to the rights protected: c. 24, *infra*.

As to sub-cc. (4) (5) (6), see notes to cc. 21 (5) and 22 (1), *supra*. There does not appear to be anything corresponding to "substituted cautions" or "consent cautions," nor anything enabling a partial vacation of cautions and inhibitions in the L. T. As., 1875 and 1897.

24. Every disposition, made by a person restrained, of an estate in the land referred to in a caution or inhibition in force at the time when the disposition was made, shall, while the caution or inhibition remains in force, take effect only subject and without prejudice to the interests of the cautioner or inhibitor, or persons deriving title under them, in the land.

See note to c. 22 (1), *supra*.

There is nothing corresponding to this clause in the L. T. As., 1875 and 1897, with the result that cautioners under those Acts do not obtain much security.

A mortgage by simple deposit of documents of title relating to an estate (c. 38 (vi.)) confers an equitable "estate" on the mortgagee (see meaning of "disposition" and "instrument," c. 2 (5) (6), *supra*); but that "estate" can be defeated by the mortgagor under c. 7, *supra*; hence the equitable mortgagee should lodge a caution. There will be no publicity attaching to this: see c. 26.

In addition to lodging a caution, he should (c. 38 (vi.)) see that no cautions or inhibitions are "lodged at the time when the disposition (i.e., the deposit of documents) was made." This will give the mortgagee a secure title, and, if required, he may make further advances without having to make any more searches for cautions or inhibitions, for the lodgment does not operate as notice of the right of the cautioner or inhibitor: c. 25, *infra*.

Though lodgment (*ib.*) does not of itself confer priority as between cautioners and inhibitors, yet an equitable mortgagee is not ousted in favour of a prior equity unless that equity is either protected by "an estate," or by a caution lodged when the equitable mortgage is made.

If the mortgage is effected by conveyance of the whole of the "estate" of the mortgagor, a caution lodged against him by the mortgagee would be useless, because the mortgagee has an estate paramount to the mortgagor.

25. A cautioner or inhibitor shall not, by means only of his caution or inhibition, acquire, in respect of his claim, any priority over the claim of any other person who has not lodged or has only subsequently lodged a caution or inhibition, nor otherwise in any way affect the priority of the claims of any persons as between themselves against the person restrained, or against the land to which the caution or inhibi-

tion relates, nor shall the lodgment of a caution or inhibition operate as notice of any right or interest of the cautioner or inhibitor. CC. 25, 26, 27 (1) (2).

CAUTIONS AND INHIBITIONS.

See note to c. 24, *supra*.

A caution or inhibition is not of itself to affect priorities; any contrary provision would unduly encourage the lodgment of cautions, and might alter beneficial rights. The principle of the Bill is to leave such rights severely alone, except so far as it is necessary to protect them. There is no reason to suppose that the system of cautions and inhibitions would not work smoothly even if, as has been suggested, beneficiaries were seized with panic and lodged them on every conceivable opportunity. Unnecessary lodgment of cautions discouraged.

It is predicted, however, that nothing of the sort is likely to occur, for the simple reason that persons, however nervous, think twice before they incur an unnecessary fee, however small. Where cautions required.

Lodgment will be confined mainly to cases of claims for recovery of land, of incumbrances on fiduciary rights (*e.g.*, life interests and reversions), of contracts affecting the land in equity, and to cases where there is a sole trustee (not being a tenant for life) or real representative.

Rights under settlements are sufficiently protected by the appointment of Settled Land Act trustees.

26. No person shall print, or publish, or circulate any copy or statement, or notice of the contents of any caution or inhibition, nor any list of cautions or inhibitions, and any person who acts contrary to this provision shall be liable to a penalty of ten pounds for each caution or inhibition as to which this provision is contravened, which penalty may be recovered as liquidated damages by the person restrained. No list of cautions or inhibitions to be printed or published.

This clause will prevent publicity.

Nearly all searches will be made by the officers of the registry, since the certificate can only be made out by them: *see* c. 28 (3) (6) (8), *infra*. No publicity in connection with cautions.

27.—(1) A person who has contracted to sell an estate shall, notwithstanding any agreement to the contrary, be bound to procure all cautions and inhibitions, so far as they affect the estate sold, to be vacated, and to produce, before completion of the sale, an office copy of a certificate of search, whereby it appears that there is not, at the time of completing the sale any caution or inhibition in force affecting the estate. Vendor to be bound to vacate cautions and inhibitions.

"A person who has contracted to sell." Thus, an intending vendor (not a mortgagor or lessor) will alone be bound by this clause. The clause works no injustice in prohibiting a vendor from contracting out of his liability; otherwise such a contract would become a common form condition of sale.

(2) Such office copy shall be deemed a document of title, and shall be subject to the same rights and incidents as instruments of title under seal.

The office copy certificate as a document of title will appear on the abstract, and only searches against the conveying party, or in case he is a real representative, against his testator or intestate will be necessary: *see* First Schedule. Certificate of search a document of title.

G. 28 (1) (2) (3)
(4) (5) (6) (7).

CAUTIONS AND
INHIBITIONS.

Requisitions
for searches
may be made.

Searches by
telegram
enable reply
on next day.

Searches.

28.—(1) Any person requiring search to be made, or requiring an office copy of a certificate of search for cautions or inhibitions, may deliver at the office of, or send by post to, the registrar a requisition or application in that behalf.

(2) The requisition or application shall be in writing in the prescribed form and the prescribed fee shall be paid thereon.

Where there is no register in a district (c. 31, *infra*), and the case is urgent, the person requiring a search may telegraph to his agents in London, who will deliver the request the same day before twelve at noon, and the office copy certificate will be posted (sub-c. (4), *infra*) or delivered to the agents on the next day, who will be able to telegraph the result.

(3) The registrar shall cause the search required to be diligently made, and shall make and file in the office a certificate, in the prescribed form, setting forth the result of the search up to twelve o'clock at noon on the day of the date of the certificate, and shall deliver to the person making the requisition, or any subsequent applicant, on his attending at the office of land registry for the purpose, or shall, if so required in writing, send to him through the post to his address, as stated in the requisition or application, an office copy of the certificate, which copy shall be evidence of the certificate.

Official
searches.

This follows the C. A., 1882, s. 2 (2), with a few necessary alterations.

(4) The office copy of a certificate shall be ready to be delivered out of the office before five o'clock in the afternoon, or, if required to be sent by post, shall be posted by the general post on the day (other than Sunday, Christmas Day, and Good Friday) next after the requisition or application is received by the registrar, and if not so ready or posted the fee paid shall be returned; and the office copy shall be ready for delivery or be posted as soon as may be.

Security
against delay.

Some security against delay in issuing the certificate seems to be required.

(5) A requisition received after twelve o'clock at noon shall be considered as received before that hour on the next day (other than Sunday, Christmas Day, and Good Friday).

(6) In favour of a purchaser, an office copy of a certificate, according to the tenor thereof, shall be conclusive, affirmatively or negatively, as the case may be.

(7) Any officer, clerk, or person employed in the office who commits or is party or privy to any act of fraud, or collusion, or is wilfully negligent in the making of or otherwise in reference to a certificate or office copy under this section, shall be guilty of a misdemeanour.

(8) A solicitor or a trustee, executor, administrator, agent, or other person in a fiduciary position, shall not be answerable in respect of any loss which occurs by reason of error in a certificate, or office copy of a certificate.

CC. 28 (8), 29
(1) (2), 30 (1)
(2).

CAUTIONS AND
INHIBITIONS.

Sub-cc. (6), (7), follow C. A., 1882, s. 2 (3) and (6).

Sub-c. (8) follows s. 2 (8) (9) (10), of the same Act.

As to sub-c. (6), compare c. 23 (2), *supra*.

"Considered
as received."

Rules.

29.—(1) Subject to the provisions of this Act, the Lord Chancellor, with the advice and assistance of the registrar and of the President for the time being of the Incorporated Law Society, and one of the conveyancing counsel of the Court, to be appointed as provided by section four of the Supreme Court of Judicature Act, 1894, and instead of the two persons there named, may make general rules in respect to the following matters:—

Rules.

57 & 58 Vict.
c. 16.

- (i.) The lodging of cautions and inhibitions, and the mode in which the registers thereof are to be kept, and the mode in which and the persons by whom searches are to be made:
- (ii.) The forms of cautions, inhibitions, and notices, and the form of requisitions for and certificates of search, and any other form which may be deemed necessary:
- (iii.) The precautions (if any) to be taken to prevent search by or on requisitions from a person having no sufficient interest in making or authority to make a search, including a prohibition of any search except on requisition to the registrar:
- (iv.) Any other matter or thing relating to or connected with cautions or inhibitions which it may be expedient to prescribe by rule.

(2) Rules so made under this section shall be deemed rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and by section four of the Supreme Court of Judicature Act, 1894.

39 & 40 Vict.
c. 59.
44 & 45 Vict.
c. 68.
57 & 58 Vict.
c. 16.

30.—(1) The Lord Chancellor may, from time to time, with the consent of the Treasury, make rules with respect to the fees payable at the office of land registry, in all matters relating to or connected with cautions and inhibitions; and so that the amounts of such fees shall be fixed from time to time at sums estimated to be sufficient to discharge the working expenses in connection with cautions and inhibitions, and no more.

Rules as to
fees.

(2) The fee paid on lodging a caution shall include the fee for sending notice under the caution, and every such notice shall be sent without any further fee being required to be paid.

CC. 30 (3), 31 (1) (2) (3). (3) One half or some other prescribed portion not exceeding one half of the ordinary fee for a caution shall be charged in respect of a substituted caution.

CAUTIONS AND INHIBITIONS.

Lodgment fees.

The fee on lodging a caution is to include the fee for sending notice thereunder; this will tend to prevent lodging a caution unnecessarily. As to "substituted cautions," *see* c. 20 (3), *supra*.

District Registries.

Establishment of county registries.

31.—(1) Orders in Council may be made for effecting the following objects, that is to say:—

- (i.) A county court registrar having an office within any county may be appointed to be the district registrar of cautions and inhibitions under this Act, in respect of all land within the county, including any adjoining city or county of a city or county of a town:
- (ii.) A district registrar may be appointed for each riding of the county of York, and the registrar of deeds for any riding may be appointed district registrar for that riding:
- (iii.) The county of Lancaster may be divided into two or more districts, and a separate registrar, being either a county court registrar or some other person, may be appointed for each district:
- (iv.) A separate district registrar, being either a county court registrar or some other person having an office within the district, may be appointed for each of the districts of the city of London, the city of Manchester, or the city of Liverpool.

District registries, whether required.

Authorizes the establishment of district registers for cautions and inhibitions, but it seems doubtful whether they will be required: *see* note to c. 28 (1), *supra*.

(2) When an Order in Council has been made constituting a district registrar for a county, or riding, or other district, then from and after a day to be mentioned for the purpose in the order a duplicate copy of every caution or inhibition affecting land within that district which has been lodged with the registrar shall be lodged by the cautioner or inhibitor with such district registrar, and a caution or inhibition of which a duplicate copy is not so lodged shall have no effect.

A complete search as to all land in "England and Wales," &c. (20 Geo. II. c. 42, s. 3) can be made in London.

(3) The register for the district shall be kept at the office of the district registrar, and the registrar shall send by post to the district registrar a note of every caution and inhibition vacated as to land within his district, and the district registrar shall enter such note on his register.

Cautions vacated only in London.

Cautions and inhibitions can be vacated only in London: *see* also c. 32 (2). This is essential for safety.

32.—(1) All the provisions of this Act, and all rules made under this Act, as to cautions, inhibitions, notices, and requisitions for search, certificates of search, fees and other matters connected with cautions and inhibitions lodged with the registrar at the office of land registry, shall apply and have effect with respect to duplicate cautions and inhibitions lodged with a district registrar, and additional, or separate, or different rules may also be made in reference to district registries.

CC. 32 (1) (2),
33 (1) (2) (3)
(4), 34 (1) (2).

CAUTIONS AND
INHIBITIONS.

Provisions of
Act as to
principal
registry to
apply to
county
registry.

(2) Provided that a notice sent for the purpose of vacating a caution shall be sent, and cautions and inhibitions shall be vacated, only by the registrar, and not by the district registrar.

See note to c. 31 (3), *supra*.

PART IX.

AMENDMENT OF THE MARRIED WOMEN'S PROPERTY ACT, 1882.

33.—(1) A married woman may, without her husband, dispose of or join in disposing of real or personal property, including land of copyhold or customary tenure, or any thing in action, held by her solely or jointly with any other person as trustee or mortgagee or real or personal representative in like manner as if she were a *feme sole*.

Disposition of
trust and
mortgage
estates by
married
woman.

(2) The enactment before contained in this section shall be read and have effect as if it were contained in the Married Women's Property Act, 1882, and all the provisions of that Act shall have effect accordingly.

(3) This section applies to all dispositions made subsequently to the commencement of that Act, and as well before as after the commencement of this Act, but so as not to render invalid or prejudice any title or right acquired before the commencement of this Act.

(4) This section extends to Ireland.

This clause is intended to meet the decision in *Harkness and Allsopp's Contract*, 1896, 2 Ch. 358.

"Copyhold . . . tenure:" see c. 1 (3), *supra*.

As to sub-c. (2), *supra*, see, particularly, M. W. P. A., 1882, s. 24.

As to Ireland, see c. 1 (4), *supra*.

34.—(1) Section nineteen of the Married Women's Property Act, 1882, does not operate to make binding on a married woman any settlement or agreement for a settlement nor to give effect to any assignment made after the commencement of that Act, unless the same is executed by her either before or after her marriage.

Amendment
of s. 19 of
M. W. P. A.,
1882.

(2) This section is not to prejudice or affect any right acquired by any person, not being the husband of the

CC. 34 (2) (3), married woman, before the time of the commencement of this
 35 (1) (2) (3), Act, nor any action or other proceeding commenced before
 36 (1) (2) (3), that time.
 37 (1).

(3) This section extends to Ireland.

AMENDMENT
 OF M. W. P.
 A. 1882.

See on this clause, *Stevens v. Trevor-Garrick*, 1893, 2 Ch. 307, and cases there cited.

Amendment of the Settled Land Acts.

Trustees of
 instrument
 creating the
 estate for life
 to be trustees
 of the whole
 settlement.

35.—(1) The persons appointed trustees for the purposes of the Settled Land Acts of an instrument under which any person, including an infant, is, for the time being, tenant for life within the meaning of those Acts, are, by this Act, constituted the trustees, for the purposes of those Acts, of the settlement for the time being subsisting under such instrument, either alone or together with any other instrument.

(2) This section applies to and shall operate to confirm all instruments, payments, receipts and other acts and things executed, made or done before as well as after the commencement of this Act, but so as not to render invalid or prejudicial any instrument, payment, receipt, act or thing executed, made or done before the commencement of this Act.

(3) This section extends to Ireland.

This clause was intended to meet the decisions in *Re Meades' S. E.*, 1897, 1 I. R. 121; *Re Tibbits' S. E.*, 1897, 2 Ch. 149: but see, now, *Re Mundy & Roper*, 42 Sol. J. 522; W. N., 1898, 49 (12); *Re Keck & Hart*, 1898, 1 Ch. 617; *Re Du Cane & Nettlefold*, 1898, 2 Ch. 96.

"Including
 an infant."

"Including an infant:" see definition of tenant for life, &c. in c. 2 (10), *supra*.

Married
 woman
 restrained
 from anticipa-
 tion to have
 powers of
 tenant for
 life.

36.—(1) Where a married woman is restrained from anticipation in respect of an estate or land, including land of copyhold or customary tenure, which, if she were not so restrained, could be disposed of by her, then she, without her husband, shall have the powers of a tenant for life under the Settled Land Acts, and sub-sections four and five of section sixty-one of the Settled Land Act, 1882, shall apply accordingly.

(2) The instrument creating the restraint on anticipation shall be deemed the settlement.

(3) This section extends to Ireland.

Married
 woman
 entitled in
 fee, but re-
 strained from
 anticipation.

A married woman entitled to an "estate," or "land," with a restraint on anticipation, is given the powers of a tenant for life under the Settled Land Acts; at present, land so held for an estate in fee is unsaleable. On a sale, the restraint will be transferred from the land to the proceeds.

For definitions of "settlement," see c. 2 (7); of "tenant for life," &c., c. 2 (10); of "Settled Land Acts," c. 2 (9); and of "land," c. 2 (1); see, also, c. 1 (3), *supra*.

This meets the decision in *Bates v. Kesterton*, 1896, 1 Ch. 159.

Amendment
 of s. 16 of the
 Settled Land
 Act, 1890.

37.—(1) Section sixteen of the Settled Land Act, 1890, shall be read and have effect as if the words "land to be dealt with" had been inserted therein instead of the words "land to be sold" wherever they occur.

- (2) This section applies to and shall operate to confirm all dispositions made before as well as after the commencement of this Act, but so as not to render invalid or prejudice any title or right acquired before the commencement of this Act. CC. 37 (2) (3), 38 (i) (ii) (iii).
 (3) This section extends to Ireland. AMENDMENT OF M. W. P. A. 1882.

A doubt has been raised whether some of the persons intended to be constituted trustees for the purposes of the S. L. A., by s. 19 of the Act of 1890, are so constituted unless the land is to be dealt with by way of sale or enfranchisement.

PART X.

EXCEPTIONS AND RESERVATIONS.

38. Notwithstanding anything in this Act contained, the following exceptions and reservations shall have effect:— Exceptions and reservations.

- (i.) All powers over an estate conferred by any Statute passed before the commencement of this Act, or conferred by any instrument, not testamentary, executed before the commencement of this Act, or by the will of any person dead before the commencement of this Act, shall remain in force and may be exercised in like manner and with the same effect as if this Act had not been passed:
- (ii.) Provided that, except in the case where, at the commencement of this Act, an infant is, or is deemed to be, the tenant for life within the meaning of the Settled Land Acts, and so long as the infant remains an infant, an estate the subject of a settlement, or of a settlement deemed to be existing under section 63 of the Settled Land Act, 1882, shall not otherwise than by way of vesting order or vesting declaration be capable of transfer by any person other than the estate owner:
- (iii.) Provided also that, where a power authorizes the appointment or creation of an estate, no other interest shall be appointed or created thereunder except an estate or fiduciary rights, but any interest authorized to be appointed or created, other than an estate, may be appointed or created by means of a corresponding fiduciary right:

These three sub-cc. must be read together: and *see* s. 3 (4) (iii.), *supra*. Existing powers preserved so long as estates or fiduciary rights only are created.

With the exception in sub-c. (ii.), powers created by statute or by instrument (instrument does not include statute) not testamentary before the Act or by the will (c. 2 (8)) of a person who dies before the 1st January, 1899, are preserved, provided an estate (c. 3 (1)) is transferred by the estate owner, except in the case of vesting orders and declarations, and that no interest is created except an estate or fiduciary rights.

"By any statute" (in sub-c. (i.)), *e. g.*, the School Sites Acts, Lands Clauses Acts, Settled Land Acts, Private Estate Acts, &c.

The exception in sub-c. (ii.) preserves the right of persons empowered to act under S. L. A., 1882, s. 60, to dispose of land for an estate in persons having powers on behalf of infants.

O. 38 (iii) (iv) the case of persons who are infants at the commencement of the Act.
(v) (vi). This exception will cease to exist after twenty-one years from such commencement.

EXCEPTIONS AND RESERVATIONS. "Settlement" (see c. 2 (7)) excludes expressly a disposition on trust for sale; the sub-c. applies to both classes of settlements.

"Settlement." (iv.) This Act shall not, except as regards an assent by a real representative, enable an interest in land to be disposed of by any instrument other than an instrument by which such interest could have been disposed of if this Act had not been passed:

Interests in land to be disposed of by deed, will, or writing as at present. This is to make it clear that an interest in land is only to be disposed of by the like instruments, as at present, except in the case of an assent: see c. 14.

Where a rentcharge is reserved under c. 4 (2), *supra*, the disposition containing the reservation will be a deed.

The creation of a term, not exceeding three years, may still be effected by parol: c. 2 (5), *supra*.

And see c. 41.

(v.) This Act shall not prejudice or affect any charge, interest, or right to which any person other than the estate owner may be entitled at the time of the commencement of this Act upon, in or to an estate:

Existing rights preserved.

Existing rights, *e.g.*, equitable mortgages by agreement, *lis pendens*, judgments, executions, Crown debts (see as to future Crown debts, c. 43), annuities, &c., are preserved and constituted "paramount interests." c. 3 (4) (iii.).

And as to contingent remainders created before 2nd August, 1877 (see *Astley v. Micklethwait*, 15 Ch. D. 59; *Re Freme*, 1891, 3 Ch. 169); these are preserved; as to the rule against perpetuities, see note to c. 9 (ii.), *supra*.

(vi.) This Act shall not prejudice or affect the right or interest of any person arising out of or consequent on possession by him of any documents relating to an estate, but so that such right or interest shall take effect and be enforced only subject to the claim of any cautioner or inhibitor whose caution or inhibition was in force before the right or interest arose; nor shall this Act affect any question arising out of or consequent upon any omission to obtain, or any other absence of, possession by any person of any documents relating to an estate:

Mortgages by deposit; vendor's lien; solicitor's lien, &c.

The rights acquired by possession of documents of title are preserved. Thus, a mortgage by deposit, vendor's lien for purchase-money, solicitor's lien for costs, &c., will not be affected: see, also, c. 24, *supra*, and note thereto; *Re Castell & Brown, Limited*, 1898, 1 Ch. 315; 42 Sol. J. 304.

Absence to obtain documents.

The same diligence to obtain documents of title, including now certificates of search (c. 27) relating to an "estate" must be used as heretofore, but if the dealings are in relation to an estate, the documents relating only to fiduciary rights or estates which are over-reached (c. 45, *infra*), will not be required.

- (vii.) All leases for a term of years absolute authorized under the powers conferred by the Conveyancing and Law of Property Act, 1881, or the Settled Land Acts, or any other Statute, or any instrument, may be granted by the person empowered to grant the same, whether being the estate owner or not, in like manner and with the same effect as if this Act had not been passed:
- C. 38 (vii)
(viii) (ix) (x).
EXCEPTIONS
AND RESERVA-
TIONS.
—
44 & 45 Vict.
c. 41.

Leases for "estates" created under powers given by statute or by an instrument (which includes all classes of settlements) are preserved and constituted as "paramount interests:" c. 3 (4) (iii.).
As to the determination of a lease by notice under a power contained in the lease, see c. 4 (5).

Where there is no express or statutory power to lease, the estate owner has the power: c. 4 (1).

As a rule the estate owner, who is the proper person to convey on a sale, will be the proper person to lease; but there are exceptions, e.g., a mortgagor who remains in possession, or a tenant for life of proceeds of sale who has leave to exercise powers under S. L. A., 1884, s. 7; it will not be necessary (c. 12 (2)) for the trustees for sale in the latter case to join in the lease.

All leases not creating a term of years absolute, except those within sub-c. (vii.), *supra*, will create fiduciary rights (cc. 5, 8); and the Bill does not affect the right of any person to create fiduciary rights: c. 41, *infra*.

Leases
creating
estates under
powers made
paramount
interests.

Who will
usually have
power to
lease.

Leases
creating
fiduciary
rights.

- (viii.) There may be made any disposition properly required in order specifically to perform a covenant, contained in a lease for life or lives or for years determinable with life or lives granted before the commencement of this Act, for renewal of that lease, or to perform any other contract entered into before the commencement of this Act:

- (ix.) The jurisdiction of any Court to rectify any instrument or to declare any disposition fraudulent and void or to grant relief in case of any fraudulent or wrongful act or dealing, or in the case of negligence or error, shall not be prejudiced or affected:

- (x.) All Statutes already passed, or hereafter to be passed, for the limitations of actions or suits relating to land, or easements or rights over or in respect to land, or relating to the acquisition of easements or rights over or in respect to land, shall continue in full force and operation, and have the same effect and result, as if this Act had not been passed.

As to sub-c. (viii.), existing contracts are preserved. Leases for life, with a covenant for renewal made before 1899, are constituted paramount interests (c. 3 (4) (iii.)); but such covenants contained in a lease made after 1898 will confer fiduciary rights only.

As to sub-c. (ix.), see note to cc. 7, 9 (xii.), *supra*. Sub-c. (x.) preserves the operation of the Statutes of Limitation and Prescription.

The Statutes will now operate immediately on adverse possession taken in every case except where a lunatic is the estate owner: see cc. 2 (10), 9 (viii.), 11 (i.) (ii.) (vi.), 13.

Rights under
existing con-
tracts and
rights of
renewal.

Fraud and
mistake.

Statutes of
Limitation
and Prescrip-
tion Act.

CC. 38 (x), 39, 40, 41, 42 (1). This puts the law as regards limited owners and infants in the same position as it is now where the land is vested in trustees. The result is that not only will fewer documents be abstracted (c. 45, *infra*), but shorter titles, where possession has run with the title, may safely be accepted.

EXCEPTIONS
AND RESERVA-
TIONS.

PART XI.

MISCELLANEOUS.

Estate owner to be liable for a wrongful disposition. 39. An estate owner, as between himself and persons whose estates or fiduciary rights are capable of being defeated by his disposition, shall be bound to make rightful dispositions only, and shall be liable as a trustee for any wrongful disposition.

Estate owner constituted a trustee where-ever necessary. An estate owner is bound to make rightful dispositions only, and is constituted a trustee in respect of not only the fiduciary rights affecting his estate, but also of the estates capable of being defeated by his disposition: *see c. 7, supra*.

Covenants may be made binding on estates. 40. An estate owner may, by covenant or agreement, relative to user of the land, bind the estate to the same extent and in the same manner as that estate could have been bound by an owner thereof if this Act had not been passed.

Restrictive covenants. Preserves the existing power to give restrictive covenants.

Interests in land to be disposed of in like manner as before the Act. 41. Except so far as by this Act expressly provided to the contrary, all estates, fiduciary rights, and other interests in land may be transferred, or created, or otherwise disposed of or dealt with in like manner and by the like instruments or modes of assurance, and shall devolve in like manner, and shall be subject to the same rules of law and equity as if this Act had not been passed.

Notice of a disposition where there is a common title. 42.—(1) Where land having a common title with other land is disposed of to a purchaser, other than a lessee, who does not obtain possession of all or some of the documents forming the common title, such person, notwithstanding any agreement to the contrary, may require that a memorandum giving notice of the disposition to him and of any provision therein restrictive of user of, or giving rights over, any other land comprised in the common title, shall be annexed to or, with the consent of the person who makes the disposition, indorsed on some one document selected by the purchaser, but which is retained in the possession or power of the person who makes the disposition, and being or forming part of the common title.

The right conferred by this clause, where insisted upon, will give notice of dealings which otherwise might be concealed or forgotten.

The vendor can refuse to indorse the notice, if convenient, and insist on its being annexed.

Prevention of suppressed deeds. The object of the clause is to prevent the suppression of material documents, and frauds or mistakes incidental thereto.

(2) The title of any person omitting to require an annex or indorsement shall not, by reason only of this enactment, be prejudiced or affected by the omission. CC. 42 (2), 43, 44 (1) (2) (3) (4) (5).

This is essential, otherwise an omission to require an annex would be equivalent to a release by deed.

MISOKL-
LANBOUR.

43. The disposition of an estate in favour of a purchaser shall operate to vest the estate in him, free from all claims of Her Majesty for estate duty, succession duty, legacy duty, and every other duty payable on death, and from all Crown debts, and all other claims on the part of the Crown which are not paramount interests affecting the estate; and the estate owner making the disposition, and the funds and other property derived from the disposition, shall alone remain liable in respect of all such duties, debts, and claims. Title not to be affected. Purchasers not to be liable to claims for duty or Crown debts.

This clause, as regards death duties, only places a conveyance by an estate owner upon the same footing as a conveyance by trustees for sale.

Without some such provision, the fiduciary rights must be investigated: see and compare L. T. A., 1897, s. 13.

The clause has no effect as regards fiduciary rights. As to duties and Crown debts, the right to which accrued before 1899, see c. 38 (v.).

The Revenue may be protected by a caution or inhibition.

44.—(1) Where an estate is vested in two or more persons as tenants in common, any one or more of them may apply to the Court, by summons or otherwise, for an order appointing two or more trustees of the estate, and vesting the estate in the trustees so appointed upon trust to sell the same. Estates vested in tenants in common.

(2) A sale shall not be made unless there are at least two trustees.

(3) Upon any such application the Court may make such order, and direct service on such persons, as it thinks proper, and may give any directions as to the sale and as to lodging any inhibition or caution, or as to the investment, payment, or application of the proceeds of sale, or any other matter as it thinks proper.

(4) Money representing a share of an estate sold under this section shall be deemed capital money arising under the Settled Land Acts from the sale of that share as if the share had been settled land, and the trustees were trustees for the purposes of those Acts, and such money shall be invested, paid, or applied, and the income of investments representing such money shall also be paid or applied accordingly.

(5) All the provisions of the Trustee Act, 1893, shall apply with respect to trustees appointed under this section. 56 & 57 Vict. c. 63.

The object of this clause is to clear a title which may have become involved by reason of a large number of undivided shares, and also to supply a simpler mode of procedure than a partition action. Undivided shares in an estate.

As to sub-c. (4), see S. L. A., 1882, ss. 21, 22 (5); "settled land," see c. 2 (2), *supra*.

The trustees appointed by the Court will, if necessary, be able to appoint new trustees: see sub-c. 5, *supra*.

C. 45 (1) (2).

**MISCELL-
ANEOUS.**

Instruments
and abstracts
of title.

45.—(1) Instruments and abstracts of title may be framed in the mode and on the principles indicated in the schedules to this Act, and in particular, where title is shown to an estate, it shall be deemed not necessary or proper to include in the abstract of title an instrument relating only to fiduciary rights or to any estate which has been over-reached or displaced by a disposition of the estate to which title is being shown.

(2) A solicitor delivering an abstract framed in accordance with this section shall not incur any liability on account of an omission to include therein an instrument which, under this section, is to be deemed not necessary or proper to be included.

The First Schedule will, under this clause, give practitioners confidence in omitting documents relating only to fiduciary rights, or to estates which have been over-reached. No occupation leases are mentioned; they will not, as at present, appear on the abstract.

The Second Schedule, as in the case of the C. A., 1881, gives a few short forms; these should be of assistance in re-modelling books of precedents.

SCHEDULES.

FIRST SCHEDULE.

Section 45.

EPITOME OF ABSTRACT OF TITLE.

SPECIMEN No. 1.

WHERE THE TITLE COMMENCES BEFORE THE COMMENCEMENT OF
THIS ACT.

The italics show how the abstract is to be framed, and what documents are to be abstracted, after the commencement of this Act.

Will of H. Jones.

10th June,
1889.

Devises Blackacre

To the use that Maria Jones may receive a yearly rentcharge of five hundred pounds for her life, and, subject thereto,

To the use of W. Jones for life with remainder

To the use of X. and Y., for a term of one thousand years, and subject thereto,

To the use of the first and other sons of W. Jones in tail with remainders over.

Trusts of term of one thousand years declared for raising ten thousand pounds for portions for younger children of W. Jones, as he shall appoint, and in default equally.

Hotchpot Clause.

Death of H. Jones.

4th June,
1890.

Will of H. Jones proved.

1st August,
1890.

Appointment by W. Jones of five thousand pounds, part of the ten thousand pounds, to his daughter, Ann Jones.

2nd September,
1896.

The Conveyancing Act, 1898, comes into operation.

1st January,
1899.

- 2nd January, 1899. Assignment by Ann Jones of her five thousand pounds, part of the ten thousand pounds raisable for portions, to trustees F. and G. on her marriage.
- 2nd February, 1899. Will of W. Jones, appointing T. Brooks his executor.
- 1st March, 1899. Death of W. Jones, leaving three children, Frederick Jones, his eldest son, and E. Jones and Ann Jones.
- 4th May, 1899. Disentail by Frederick Jones.
- 30th July, 1899. *Will of W. Jones proved by T. Brooks, his executor.*
- 3rd May, 1900. Mortgage by E. Jones of his one-half of the ten thousand pounds to K.
- 2nd April, 1907. Death of Maria Jones.
- 1st October, 1907. Release by F. and G. on payment to them of the five thousand pounds of Ann Jones.
- Same date. Release by E. Jones and K., his mortgagee, of the five thousand pounds raisable for E. Jones.
- 2nd October, 1907. *Conveyance of Blackacre by T. Brooks, as real representative, to Frederick Jones in fee.*
- 31st March, 1908. *Office copy certificate that no caution or inhibition is lodged against F. Jones.*
- 1st April, 1908. *Mortgage of Blackacre by Frederick Jones to C., to secure five thousand pounds and interest.*
- 5th May, 1908. Second mortgage by Frederick Jones to D., to secure three thousand pounds and interest.
- 8th June, 1908. Third mortgage by Frederick Jones to E., to secure two thousand pounds and interest.
- 4th November, 1908. Conveyance by Frederick Jones on his marriage (subject to above mortgages) to M. and N. upon trust for sale, the proceeds of sale being settled by an indenture of even date.
- 5th November, 1908. Death of M.
- 11th December, 1908. Appointment of F. as trustee of the conveyance on trust for sale in the place of M., and jointly with N.
- 9th June, 1919. *Office copy certificate that no caution or inhibition is lodged against C.*
- 10th June, 1919. Release by E. of his mortgage to N. and F.
- Same date. Release by D. of his mortgage to N. and F.

Conveyance by C. in consideration of five thousand pounds paid to him, and of seven thousand pounds paid to N. and F. to John Williams in fee. Same date.

NOTE.—The title being made under the absolute power of disposition of C., it is unnecessary to recite the trust for sale, or show the appointment of a new trustee.

No evidence of deaths, births, &c., is required. Probate of the will of H. Jones is conveyancing evidence of his death.

SPECIMEN No. 2.

WHERE THE TITLE COMMENCES AFTER THE COMMENCEMENT
OF THIS ACT.

Settlement by John Wilson, being a conveyance by him of Whiteacre to R. and S. to the use of himself in fee upon trust to give effect to Fiduciary Rights declared by an indenture of even date. 4th July, 1899.

Appointment of R. and S. to be trustees for the purposes of the Settled Land Acts.

Provisions extending certain of the powers conferred by the Settled Land Acts, and giving further powers.

Declaration of trust.

Trusts declared for John Wilson for life, with remainder

Same date.

To R. and S. for a term of five hundred years to raise five thousand pounds portions for younger children of John Wilson, with remainder

To Henry Wilson for life, with remainder

To H. and K. for a term of one thousand years to raise five thousand pounds portions for younger children of Henry Wilson, with remainder

To the first and other sons of Henry Wilson in tail, with further remainders over.

Appointment of new trustee.

4th September, 1910.

Recites that S. is incapable of acting. Appointment by John Wilson of P. to be trustee of the term of five hundred years in the place of S. and jointly with R. Declaration vesting term of five hundred years in R. and P.

- Same date. Appointment of new trustee, whereby John Wilson appoints P. to be trustee of the deed of disposition upon trust, in the place of S., and jointly with R. for the purposes of the Settled Land Acts.
- 7th January, 1911. Will of John Wilson appointing Isaac James executor.
- 3rd September, 1914. Death of John Wilson, leaving younger children.
- 4th April, 1915. *Will of John Wilson proved by Isaac James his executor.*
- 1st October, 1916. Assignment by R. and P. to B. of term of five hundred years by way of mortgage for securing five thousand pounds and interest.
- 2nd December, 1916. *Conveyance by Isaac James, as real representative, to the use of Henry Wilson in fee.*
- Appointment of R. and P. to be trustees for the purposes of the Settled Land Acts.*
- The same provisions for extending powers conferred by the Settled Land Acts as are contained in the settlement of the fourth July, one thousand eight hundred and ninety-nine.*
- NOTE.—These may be inserted either actually, if short, or by reference, if long.
- 4th November, 1920. Transfer of the mortgage for five thousand pounds by B. to C.
- 10th July, 1925. Death of Henry Wilson, leaving Thomas Wilson, his eldest son, and two younger children.
- 1st October, 1925. *Letters of Administration to real and personal estate of Henry Wilson granted to James Cook.*
- 3rd November, 1925. Disentail by Thomas Wilson.
- 4th November, 1925. Release by C. on payment off of his mortgage debt of five thousand pounds and surrender of the term of five hundred years.
- 19th November, 1925. *Office copy certificate that no caution or inhibition is lodged against Henry Wilson or James Cook.*
- 20th November, 1925. Release by two younger children of Henry Wilson of their portions.
- Same date. Demise by Thomas Wilson to L. and M. for a term of eight hundred years, subject to redemption on payment of five thousand pounds and interest.
- Same date. *Conveyance by James Cook, as real representative, to the use of L. and M. for the term of eight hundred years, subject to the right of redemption, and, subject thereto, to the use of Thomas Wilson in fee.*

Office copy certificate that no caution or inhibition is lodged against Thomas Wilson or L. or M. 9th March, 1930.

Conveyance by Thomas Wilson and L. and M. to R. Horn in fee. 10th March, 1930.

NOTE.—No evidence of deaths, births, pedigree, &c., will be required.

SECOND SCHEDULE.

Section 45.

FORM No. 1.

SETTLEMENT (ON MARRIAGE) BY AN ESTATE OWNER OF AN ESTATE.

THIS INDENTURE made [&c.] between *John H.* of [&c.] of the first part, *Jane W.* of [&c.] of the second part, and *X.* of [&c.], *Y.* of [&c.] and *Z.* of [&c.] of the third part.

WITNESSETH that in consideration of the intended marriage between *John H.* and *Jane W.*, *John H.* as settlor hereby conveys unto *X.*, *Y.*, and *Z.* All that [&c.]

To hold to *X.*, *Y.*, and *Z.* in fee simple, to the use of *John H.* in fee simple

Upon trust to give effect to the fiduciary rights declared by an indenture bearing even date with but intended to be executed immediately after these presents, and made between the same parties and in the same order as these presents.

AND IT IS HEREBY DECLARED that *X.*, *Y.*, and *Z.*, and the survivors and survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being hereof, hereinafter called the trustees or trustee, are hereby appointed to be the trustees or trustee hereof for all the purposes of the Settled Land Acts, 1882 to 1890.

AND THAT notwithstanding any restriction contained in those Acts, the following powers additional to or larger than those conferred by those Acts, are hereby conferred on the estate owner for the time being in reference to the estate hereby conveyed, and on the trustees or trustee that is to say [*Here insert any additional powers that may be required.*]

In witness [&c.]

APPENDIX.

FORM No. 2.

SETTLEMENT BY AN ESTATE OWNER (ON MARRIAGE)
CREATING FIDUCIARY RIGHTS.

THIS INDENTURE made [&c.] between *John H.* of [&c.] of the first part, *Jane W.* of [&c.] of the second part, and *X.* of [&c.], *Y.* of [&c.], and *Z.* of [&c.] of the third part.

WHEREAS these presents are supplemental to an indenture bearing even date with but executed before these presents, and made between the same parties and in the same order as these presents, whereby certain hereditaments situated at _____ in the county of _____ were conveyed to the use of *John H.* in fee simple upon trust to give effect to the fiduciary rights declared by an indenture of even date therein referred to (meaning thereby these presents), and whereby *X.*, *Y.*, and *Z.* were appointed trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890, and certain powers were conferred in addition to the powers conferred by those Acts.

NOW THIS INDENTURE WITNESSETH that in consideration of the intended marriage between *John H.* and *Jane W.* *John H.* hereby agrees that he will hold the hereditaments conveyed to him by the said indenture of even date herewith Upon trust to give effect to the fiduciary rights following, that is to say Upon trust for *John H.* during his life without impeachment of waste with remainder Upon trust [&c.]

[*Here insert the trusts and any other proper provisions.*]

In witness [&c.]

FORM No. 3.

CONVEYANCE ON SALE BY AN ESTATE OWNER TO GIVE EFFECT TO
SUBSISTING FIDUCIARY RIGHTS UNDER A SETTLEMENT.

THIS INDENTURE made [&c.] between *Henry V.* of [&c.] of the first part, *John H.* of [&c.] of the second part, and *X.* of [&c.], *Y.* of [&c.] and *Z.* of [&c.] of the third part.

WHEREAS *Henry V.* is entitled for an estate in fee simple in possession free from incumbrances to the hereditaments hereinafter conveyed. AND WHEREAS these presents are supplemental to an indenture (hereinafter called the principal indenture), dated [&c.], and made [&c.] [*Form No. 1*], whereby certain hereditaments therein mentioned were conveyed to the use of *John H.* in fee simple Upon trust to give effect to the fiduciary rights declared by an indenture of even

date therewith, and by the principal indenture X., Y., and Z. were appointed to be trustees for the purposes of the Settled Land Acts, 1882 to 1890.

NOW THIS INDENTURE WITNESSETH that in consideration of the sum of pounds now paid to *Henry V.* by X., Y., and Z. by the direction of *John H.* for the purchase of the fee simple of the hereditaments hereinafter described, the receipt of which sum *Henry V.* hereby acknowledges, *Henry V.* as beneficial owner hereby conveys unto *John H.* All those [&c.]

To hold unto and to use of *John H.* in fee simple upon the same trusts as are declared by the principal indenture. [*Here insert appointment of X., Y., and Z. to be trustees for the purposes of the Settled Land Acts, and by reference the provisions (if any) contained in the principal indenture.*]

In witness [&c.]

NOTE.—On a purchase of a term of years absolute out of capital moneys, the term should now be conveyed to the tenant for life instead of to the trustees of the settlement.

FORM No. 4.

CONVEYANCE BY A REAL REPRESENTATIVE.

THIS INDENTURE made [&c.] between *Thomas R.* of [&c.] of the first part, *Edward H.* of [&c.] of the second part, and X. of [&c.], Y. of [&c.] and Z. of [&c.] of the third part.

WHEREAS *John H.*, late of [&c.] who died on the day of , 1898, duly made his will dated [&c.] which was proved on the day of one thousand eight hundred and ninety-eight, in the principal probate registry by *Thomas R.* alone.

AND WHEREAS *John H.* was at his death solely seised of the hereditaments hereinafter conveyed for an estate in fee simple free from incumbrances.

NOW THIS INDENTURE WITNESSETH that *Thomas R.* as real representative hereby conveys unto *Edward H.* All those [&c.]

To hold unto and to the use of *Edward H.* in fee simple [*Here, if a settlement is on foot, insert trust, by reference, to give effect to fiduciary rights, and appointment of X., Y., and Z. (being the trustees for the time being of the settlement of fiduciary rights) to be the trustees for the purposes of the Settled Land Acts, and insert, either at length or by reference, any subsisting power to appoint new trustees and other powers contained in the original disposition of the estate.*]

In witness [&c.]

NOTE.—The above form, with slight modifications, is applicable to a conveyance on sale by a real representative.

APPENDIX.

FORM No. 5.

CONVEYANCE BY REAL REPRESENTATIVE OF AN ESTATE
CREATING THEREOUT A PARAMOUNT ESTATE.

THIS INDENTURE made [&c.] between *James Cook* of [&c.] of the first part, L. of [&c.] and M. of [&c.] of the second part, and *Thomas Wilson* of [&c.] of the third part.

WHEREAS on the first day of October one thousand nine hundred and twenty-five, letters of administration to the real and personal estate of *Henry Wilson*, late of [&c.], who died [&c.], were granted by the principal probate registry to *James Cook*.

AND WHEREAS *Henry Wilson* was at his death solely seised of the hereditaments hereinafter conveyed for an estate in fee simple.

NOW THIS INDENTURE WITNESSETH that *James Cook*, as real representative, hereby conveys unto L. and M. All that [&c.] To hold unto L. and M. in fee simple

To the use of L. and M. for a term of eight hundred years, without impeachment of waste, to commence from [&c.] but subject to the right of redemption by *Thomas Wilson* under an indenture dated [&c.] and made between [&c.] on payment of the sum of five thousand pounds, and interest thereon at the rate of four pounds per centum per annum, and subject to the term.

To the use of *Thomas Wilson* in fee simple. In witness [&c.]

NOTE.—The above form is that of the conveyance of twentieth November one thousand nine hundred and twenty-five, mentioned in the First Schedule, Specimen No. 2.

FORM No. 6.

CONVEYANCE ON SALE BY MORTGAGEE ESTATE OWNER, THE
MORTGAGORS JOINING TO ACKNOWLEDGE RECEIPT.

THIS INDENTURE made [&c.] between C. of [&c.] of the first part, N. of [&c.] and F. of [&c.] of the second part, and *John Williams* of [&c.] of the third part.

WHEREAS under an indenture of mortgage dated the first day of April, one thousand nine hundred and eight, and made between *Frederick Jones* of the one part and C. of the other part, the hereditaments hereinafter conveyed are vested in C. for an estate in fee simple by way of mortgage for securing payment to him of a sum of five thousand pounds and interest thereon and the right of redemption is vested in N. and F. as trustees.

AND WHEREAS the principal sum of five thousand pounds remains due to C. but all interest thereon has been paid as he hereby acknowledges.

NOW THIS INDENTURE WITNESSETH that in consideration of the sum of five thousand pounds paid to C., and of the sum of seven thousand pounds paid to N. and F., those two sums making together the total sum of twelve thousand pounds paid by *John Williams* for the purchase of the fee simple of the hereditaments hereinafter described (the receipt of which sum of five thousand pounds C. hereby acknowledges, and the receipt of which sum of seven thousand pounds N. and F. hereby acknowledge) C. as mortgagee hereby conveys to *John Williams* All that [&c.]

To hold unto and to the use of *John Williams* in fee simple, discharged from all claims under the recited mortgage.

In witness [&c.]

NOTE.—The above form is that of the conveyance of the tenth day of June, one thousand nine hundred and nineteen, mentioned in the first Schedule, Specimen No. 1.

The purchaser does not require a conveyance from N. and F.

FORM No. 7.

CONVEYANCE ON SALE RESERVING A RENTCHARGE.

THIS INDENTURE made [&c.] between A. of [&c.] of the one part and B. of [&c.] of the other part

WITNESSETH that in consideration of the sum of pounds now paid by B. to A. (the receipt, &c.) and of the rentcharge hereinafter reserved A. as beneficial owner hereby conveys unto B. All those [&c.] except and reserving all mines and minerals [&c.] and the free passage of water [&c.]

To hold unto and to the use of B. in fee simple reserving out of the premises and yielding and paying to A. in fee simple the perpetual yearly rent or rentcharge of pounds, to be for ever charged upon and issuing out of the premises clear of all deductions (except landlord's property tax), and payable by equal half-yearly payments on [&c.], the first payment to be made on [&c.]

And B. hereby covenants with A., his heirs and assigns, to pay [&c.]

In witness [&c.]

APPENDIX.

FORM No. 8.

WILL OF AN ESTATE OWNER.

I, A. B. of [&c.], hereby revoke [&c.], and declare this to be my last will [&c.]. I APPOINT P., Q., and R. to be the executors and trustees of my will, and I appoint them and the survivors and survivor of them [&c.] to be the trustees or trustee of my will for all the purposes of the Settled Land Acts, 1882 to 1890, and also for all the purposes of section forty-two of the Conveyancing and Law of Property Act, 1881, and I direct that the trustees or trustee shall be appointed to be trustees for the purposes of the Settled Land Acts, 1882 to 1890, of the disposition of the estate upon trust, when made for giving effect to the fiduciary rights herein-after declared. I devise all my lands and hereditaments in the county of _____, to the use of my wife in fee simple upon trust to give effect to the fiduciary rights following, namely, upon trust for my wife during her life without impeachment of waste, with remainder Upon trust for my first and other sons successively according to seniority in tail [&c.]

In witness [&c.]

NOTE.—Lands should be devised to the use of the first tenant for life, notwithstanding that the devise does not pass the legal estate. If the real representative be directed to hold on trust he would be constituted trustee of the legal estate, as under a devise unto and to the use of a trustee upon trust.

FORM No. 9.

ASSENT BY REAL REPRESENTATIVE.

I, A. B., of [&c.] as the real representative of X. Y., late of [&c.] deceased hereby, as real representative, assent to the vesting in C. D. of [&c.] of [All that farm &c.] or [All the property described in the Schedule hereto] for all the estate or interest of the said X. Y. at the time of his death [or, for an estate in fee simple].

[Here, if a settlement is on foot, insert appointment of proper persons to be trustees for the purposes of the Settled Land Acts.]

Dated this _____ day of _____ 18 ____.

APPENDIX II.

Official Memorandum as to Compulsory Registration in the County of London.

1. By the combined effect of Orders in Council dated the 18th of July and the 20th of October, 1898, made in pursuance of the 20th Section of the Land Transfer Act, 1897, it is declared that registration of title to land is to be compulsory on sale as follows:—

In the Parishes of Hampstead, St. Pancras, St. Marylebone, and St. George's Hanover-square, on the 1st of January, 1899:

In the Parishes of Shoreditch, Bethnal Green, Mile End Old Town, Wapping, St. George's-in-the-East, Shadwell, Ratcliff, Limehouse, Bow, Bromley, and Poplar, on the 1st of March, 1899:

In the remainder of the County at various dates, the first of which is the 1st of October, 1899.

In order to enable all persons to ascertain with certainty the limits of the area of compulsory registration, maps (on a scale of six inches to the mile) of the parishes contained in the first two groups above-mentioned have been prepared and placed in the Registry. These show the parish boundaries, and can be inspected (free) by any person.

2. The effect of the Order is to render registration compulsory on all ordinary [for exemptions, *see* section 24 of the Act of 1897] sales of freeholds, and on all sales of leaseholds having 40 or more years still to run, or two or more lives still to fall in, and on grants of leases or underleases for like periods. A lease and a reversionary lease will be deemed in most cases (*see* rule 56) to create one continuous term. Registration does not apply to a lease created for mortgage purposes, or containing an absolute prohibition against alienation. *See*, as to Freeholds, section 20 of the Act of 1897, and as to Leaseholds, section 11 of the Act of 1875 as amended by schedule 1 of the Act of 1897, section 22 (6) (g) of the Act of 1897, and rules 56, and 58 to 60.

3. The mode of registration thus made compulsory is registration with a "possessory title," which is effected on *primd*

facie evidence only, and does not involve any official investigation. The *prima facie* evidence required (*see* more fully, rules 17 to 24, and 43, 44) for a possessory title is either—

(i.) A conveyance or assignment on sale, or a lease, to the applicant, or

(ii.) A statutory declaration by the applicant or his solicitor to the effect that the former is entitled, accompanied by the latest document of title in the applicant's possession.

It may be assumed that the first of these alternatives will be the adopted in cases of compulsory registration.

4. The ordnance map being the basis of all descriptions of land in the register [rule 209], the application must also contain, or be accompanied by, sufficient information to enable the land to be fully identified on that map. This may either be in the deed itself, or by an accompanying plan or by the applicant (or his solicitor) personally pointing out the land on the ordnance sheet kept at the Land Registry Office.

The ordnance maps of the above-mentioned parishes, on the scale of five feet to the mile, have been specially revised by the Land Registry surveyors, and the Department can furnish, without delay, to any person requiring it, a revised plan of any part of those parishes at the cost of the ordnance sheet (2*s.* 6*d.*) and the draughtsman's labour in filling in the alterations.

It is suggested that in preparing purchase deeds and leases for compulsory registration, the "parcels" in the deed should refer to an endorsed or annexed plan consisting of the revised ordnance map, or a copy of it. The map department of the Land Registry will afford all information and assistance that may be required for this purpose.

It will also save time in the completion of the registration if the person preparing the conveyance or assignment or lease will give instructions beforehand to the Land Registry (if possible, by leaving the contract) to prepare a plan for filing, and a tracing for the land certificate. The cost of this plan and tracing is included in the *ad valorem* fee, payable on registration, which is 1*s.* 6*d.* for every £25 in value up to £3 for £1,000, and thence, at gradually diminishing rates, stated in the Fee Order of 27th October, 1898, to a maximum of £25 for £32,000 and upwards.

5. The registration of a purchaser as proprietor of the land under the Land Transfer Acts renders it unnecessary to register a memorial of the purchase deed in the Middlesex Registry (*see* the Land Registry (Middlesex Deeds) Act, 1891, Schedule I., paragraph 14). Priority dates from the delivery at the Land Registry of the application for registration. (Rules 19 and 24.)

6. It is suggested that in cases of compulsory registration on sale, or on the grant of a lease, the most convenient course will generally be to bring to the Land Registry merely the

purchase deed or lease, and such further particulars (if any) by plan or otherwise, as may be necessary to enable the land to be identified on the ordnance map. The formal application for registration, and the entries for the register, will then be drawn up by one of the assistant registrars in the presence of the applicant or his solicitor, who will thereupon (if satisfied) sign and approve the same. Where this course is adopted it is anticipated that the land certificate will usually be issued in the course of two or three days.

If the purchase deed or lease is not intended to be permanently deposited in the Registry, a copy, written on stout foolscap paper (both sides), including a tracing or other copy of the plan (if any) thereon, must be furnished also.

7. Where an estate is being laid out for building, according to a settled plan, special arrangements can be made to facilitate the registration of leases and sales. As to these, inquiry should be made at the Registry.

8. Where an absolute title is required it will usually be best to complete the possessory registration provisionally, but to postpone the issue of the land certificate until the absolute title has been granted. The fee for possessory title will be payable at once, and the amount will be allowed for when the absolute title is completed.

9. Further information will be furnished on inquiry in regard to any particular case.

10. The business of registration for the County of London will be carried on in a large room on the ground floor of No. 6, Portugal-street, Lincoln's-inn, which can also be approached through No. 34, Lincoln's-inn-fields. From the commencement of compulsory registration the office will be open to the public from 10 to 4 throughout the year, except on Saturdays, when it will close at 2, and on Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Monday in Whitsun week, Christmas Day, and the next following working day, when it will be closed altogether.

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